The Triall of Baſtardie:

THAT PART OF THE

ſecond part of Policie, or maner of Gouernement of the Realme of England: ſo termed, Spirituall, or Eccleſiaſticall.

Annexed at the end of this Treatiſe, touching *the prohibition of marriage, a Table of the Leuitical,* Engliſh, and Poſitiue Canon Catalogues, their *concordance and difference.*

By William Clerke.

Iohn Chriſoſt.

Nemo verè indè, aut obſcurus, aut clarus eſt.

LONDON,
Printed by Adam Fſlip.
1594.

To the right worſhipful *Robert Redmayn, doctor of law, Iudge Delegate and* Commiſſarie (for the vacancie of the See) within the Citie and dioces of Norwich, increaſe of worſhip, with all health and happineſſe.

THe ſingular good affection (right worſhipfull) I haue reaped at your handes, deſerueth more at mine, than a bare imitation of learning: Neuertheleſſe for the loue you beare me, I haue aduentured (and the rather) to preſent theſe labors, whatſoeuer they may ſeeme vnto you, to ſignifie aſvvel the continuance of my ſtudies, vvherein you haue encouraged me, as to manifeſt that deſire I ſhould haue, to ſhew my ſelfe as vvil-

ling to be thankfull for a benefite receiued, as any reaſon would I ſhould be. Beſides the argument it ſelf conſidered, our modern natures, and mine owne imperfection togither, might iuſtly moue no leſſe. When therefore I conſidered (firſt) that you fauour the Authour, next, ſo well appointed to defend the worke (the regalitie, laws, and cuſtomes of this land vntouched) I reaſoned thus, *Duo vincula fortiora*, and ſo it became an oblation vnto you, which accepted, you receiue it from him, vvhoſe heart giueth it freely, and vvithall, that dutie and affection, that your former fauors haue merited: and ſo I reſt your Worſhips in equall duetie and affection.

W. C.

The Preface.

WHen he had handled (that honourable knight, *Sir* Thomas Smith) *in his* Repub. Anglorum, *amongst other things, the generall consent and authoritie, as well of the Prince and nobilitie, as the commons of this land togither; that is to say, the Parliament,* i. *the whole head and bodie of this Realme, as also the authoritie of the Prince apart, and had descended to the point,* viz. *How he doth, this head, distribute his authoritie and power to the rest of the members, for the gouernment and common-wealth of the politique bodie of the same, and (in the prosecution of that) had discussed as well at large the maner and forme of the trials or iudgements that be absolute, here, and definitiue by Parliament, Battell, and the great Assise: the method he obserued, and the argument that he handled therein, brought him (at the last) and his stile, to the court which is spirituall, or ecclesiasticall here in England: so termed in the books of law, the Court Christian, or* Curia Christianitatis.

This hath equally (with the other) it force, power, authoritie, rule, and iurisdiction. Briefly it is descended from the same stocke: namely, the imperiall crowne of this land. But this neuertheleſſe, though parcell of the same gouernment or pollicie, he hath passed ouer, onely with a bare mention.

Neither is it anie maruell: for being (when hee wrote that worke) in the midst of so weightie affaires, ambassadour in the court of France: it rather seemes, than contrarie, his busineſſe, there, preuented him: how could he otherwise, or at the least be iudged so, by any probabilitie, being (as he was) of that authoritie in his own profession, viz. Doctor of the ciuill law, haue pictured (as he did) that course so liuely, where least hee was experienced, and omitted the other?

The Archbishops (he saith) and Bishops haue a certaine peculiar iurisdiction in testaments, legations, tithes, mortuaries, marriages, adulterie, fornication, orders, religion, &c. These (he saith) be ordered in their courtes, after the fashion and maner of the law ciuill, or rather cōmon by citation, libel, contestationem litis, *examination of witneſſes priuily, by exceptions, replications apart, and in writing, allegations, matters by sentences giuen in writing, appellations from one to another, as well à* grauamine, *as à* sententia definitiua.

Their

Their names he addeth and titles of Procurators, aduocates, assessors, ordinaries, commissaries, &c. far from the maner (as he saith, and as it is indeed) of our order in the common lawe of England, that part of the policie or gouernment of the land that hee handled at large, and this is all the light he hath left of the spirituall course, the other.

I haue therefore aduentured (gentle reader) to imitate that worthy learned man in his secular trials there, in this spiritual cognisance, The triall of Bastardie *here.*

Neuertheless, because it ariseth, the question of Natiuities in the secular courts, but incedētly: and the Ordinaries iurisdiction (by consequence) not ordinarie in that triall, but delegata *(as it followeth more at large in this treatise:) it must, this part of that second part of gouernment, be alwaies vnderstood, as the iurisdiction to the Ordinarie is* demandata *from the prince, and not otherwise. I haue therfore composed it, and not (I hope) vnaptly, a treatise of it selfe: and that because the iurisdiction in this triall is diuerse from the rest. This is therefore presented vnto thee heere: the rest thou shalt haue, if God permit, in the tractat of the* Ordinarie.

In the meane time (if it please thee to accept it) this thou shalt haue withall, viz. *How the lawes,*

how the canons, haue and do either of them esteem of Bastardy diuersly: and how they haue and do, the laws and canons, make their computations (in degrees of consanguinitie) diuersly.

This computation (verily) in degrees in this kind, inconsideratly, that is to say, without regard of the laws, and canons, how they repute the same, begat in former ages no small error in Genealogies, the laws of Matrimonie, the holy Fathers numeration, and auncient Computation of the Church.

Of such an effect as this, that infringed so long ago the prohibition of marriage, commended also vnto thee here in euery kind, where both the tree, and forbidden fruit is pictured, Estimandum est, *or rather to be feared it is, of such coniunctions had, a base kind of people, ignoble, and licentious to be begotten, apt to prouoke in time, euen the rest to naughtinesse also, and make them become in fine, nor manly in war, nor stable in faith, nor honoured of men, nor beloued of God.*

But let no man be here too seuere a iudge: for vertue somtimes springs from lawlesse knowledge, and vice againe from lawfull: neither let me flatter nor offend: the one is no defence of sinne, nor the other impeachment of lawfull matrimony: for neyther doth the adulterous child that is vertuous, nor shake

off,

off, nor ſhadow his adulterous parents crime, nor the legitimat that is vicious, diſhonour the vndefiled bed. And to this effect it is written, Sicut boni filij adulterorum, nulla eſt defenſio ſic mali filij coniugatorum, nullum eſt crimen nuptiarum.

Let him therfore neuer feare to ſincke, that hath this reſt to beare him, namely, vertue: for though his parents be the worſt, their vileneße ſhall not blemiſh him at all, if vertue beares him vp: for if themſelues (if conuerts afterwards) their former life deſtroys not, much more their off-ſpring decked with his proper vertue ſhines, and ſhall not be eclipſed with the oprobrious liues of his parents; and why? Non eſt eius culpa qui naſcitur, *It is anſwered thus, it is not his default that is borne, but his that doth beget him, the ſeed it ſelfe is not reputed euill: for nature receiuing hir owne, ſhee beſtowes it, ſhe frames it next a bodie, the ſeruing members enſue,* Et inter illas ſacri ventris anguſtias, dei manus ſemper operatur: *Hence is the fleſh, wilt thou condemne it now? looke at the fleſhly meanes:* Non peccat terra quæ confouet, non ſemen quod in ſulcis iacitur, non humor, vel calor, quibus temperata frumenta in germen pullulant, ſed (verbi gratia) fur & latro: *Temper thy iudgement therfore in this behalfe,* Quia non in ſeminibus, ſed in voluntate naſcentis,

Hieron. in Epiſt. cont. Ruphi diſt. 56. c. naſci.

naſcentis, cauſa vitiorum eſt, atque virtutum. *And if a law were made, that ſuch might inherit, the vertuous I meane in the one, before the vitious other, why ſhould not that law be iuſt? the other I call not vniuſt, but yet it is but temporall, and within the libertie of Princes, iuſtly to be altered by the times, though iuſtly they cannot ſtand in one common wealth together: for that that is in preſent beeing bridles now the parent to be father of Legitimation, and the other ſhould bridle (if it were) the ſonne to furniſh himſelfe with vertues, leaſt happily his father ſhuld haue begotten a better ſonne abroad, than all the world can finde at home.*

I would be loath in mouing a charitable iudgement in the ſonne, to ſeeme to giue hope to the father, or libertie to offend, God forbid. The happieſt off-ſprings they be, and nearer vnto hope (let all men take me ſo) that be borne De legitima parentum coniunctione, approbata per leges, *whereof more at large in this treatiſe: for leauing the adulterous bedde: or knowledge had without ſolemniſed marriage, which alſo we haue touched in the ſame, that knowledge had (in marriage) in conſanguinitie and affinitie, haue been, is, and wilbe in all chriſtian ages to come, reputed for no leſſe, for ſundrie reaſons. And firſt becauſe that naturallie a man*

doth

doth owe a certaine honour, reuerence, and feare to his parents, and therefore vnto others of his kinne, which come verie nigh of the same, in so much that in old time (as Valerius Maximus *sheweth) it was not lawful for the sonne, to bath in one place with his father, least he should see him naked.*

Secondlie, such persons must needes be conuersant, and in companie together: if nature therefore abhorred not knowledge in such, they should haue too much opportunitie to licentious liuing, whose neerenesse remooueth all suspition from the world. And behold the heathen Philosopher here. Where (*saith he*) a man doth loue his kinswoman by nature, if there should be put to this the loue of bodily medling, there should be too much heat and feruentnesse of loue, and too great prouocation to fleshly lust, which is contrarie to the chastitie of marriage. Arist lib. 2. polit.

Thirdly, such marriages shall hinder that mutuall loue and friendship, that is both profitable and honest to human societie, for when a man doth take a wife that is a stranger to him, all the kinred of his wife be knit vnto him by a certaine league of friendship and loue, as if they were his owne: this hath nature ordeined alreadie in blood. Hence proceeded the prohibitiõ of the Canons, That men and women, to whom loue and concord was thought

both profitable and honeſt, ſhould be knit together by ſundry degrees of kinred, and not that one ſhould haue many in one, ſed ſingulæ ſpargerẽtur in ſingulos, *the Canons tearme them* neceſſitudines, *which they would haue diſperſed. In the treatiſe of the determinations of the moſt famous and moſt excellent vniuerſities &c. fourth Chap. after the authour (whoſoeuer he was) had cited, touching ſuch vnlawfull marriages, the doctours of the church of Chriſt, that were of greateſt authoritie, fame, and renowne, he deſcended to others, which, though not of ſo great authoritie, yet their iudgements for their credit, learning and grauitie, was receiued worthely, amongſt whom he affirmed (to this effect) of an Archbiſhop in this land,* viz. *being asked by what reaſon the forbidding we ſhould not marrie in cõſanguinitie nor affinitie, had ſo great ſtrength and power in the church? anſwered.* The laws and Canons of the church, be full of this commandement, and there be many decrees of the old fathers alſo, that we ſhould not marrie with any of our blood, &c. and as for the cauſe and reaſon of this commaundement, albeit I might ſay that the ſimple and plaine reaſon is, to obey the power and authoritie of them to whom Chriſt ſaid, It is not you your ſelfe that ſpeaketh, but the ſpirit of your father which

which ſpeaketh in you, &c. yet for all that, by the conſideration and marking alſo of holy ſcripture, I am woont to thinke thus with my ſelfe, amongſt the old & ancient people of the Iews, it was not lawful for any perſon to marry with any out of his tribe: and when I doubted and ſought a reaſon why ſo, the daughters of *Zelophehad*, came to my remembrance, &c. But in this caſe *Moſes* gaue an anſwere to their carnalities, That they ſhould not marrie out of their tribe: but the goodneſſe and perfection of vs that be Chriſtian folke, is not on this faſhion, for ſeeing our heritage is God, of whom it is ſpoken, God is loue and charitie, as the Iewes vſed a law agreeable to their heritage, ſo we ought to maintaine a law for ours, which is the law of loue and charitie.

There is light & darkneſſe, good and euill, there be lawfull and expedient, lawfull not expedient, nor lawfull, nor expedient marriages; theſe be ſeen in diuers families, in outward degrees, in nigh kinred: with this, I commend to the reader the admonition of the Engliſh church, that is, to conſider in contracts of matrimonie, what is lawfull, what honeſt, what expedient.

Gregor. Nazian. de bono Coniugĩ.

Coniugium radix & fulcrum nobile vitæ,
Coniugium præstat, si sis sine robore vires:
Sic sumus inter nos, aureſquè, manuſquè, pedeſquè,
Mutua sic duros emollit cura labores,
Mutua sic gemina dulcedine gaudia creſcunt,
Quin deſiderium, conceſſo limite, claudit
Coniugium, cuſtoſquè æternùm obſignat amores:
Vt sunt carne simul iunc̃ti, sic mente cohærent,
Inter sequè pijs miſcent incendia Flammis.
Et quia præſidij est, rerumquè hic maior egeſtas,
Fœmina virquè deo, maiori pectore fidunt.

A Table of the contents of *this Booke.*

CHAP. I.

OF poſſeſsions and natiuities, their cogniſance and triall. fol. 1

CHAP. II.

The canonicall and ſecular computations in conſanguinitie, their confuſion. The ſequel. The Lateran ſynod. The anſwere of the Prelates, to the kings writ of Baſtardie. Their inſtance. The concluſion of he nobles at Merton. fol. 7

CHAP. III.

The tranſmiſsion or writ of certificat to the Ordinarie. The Statutarie antecedents to the ſame. fol. 24

CHAP. IIII.

The Ordinarie. His office, and order in proceeding.

ceeding. fol. 31

CHAP. V.

Of matrimonie, and legitimate issue. fol. 39

CHAP. VI.

Of consanguinitie or bloud : The figure and declaration thereof. fol. 51

CHAP. VII.

Of affinitie or allian ce by marriage : The figure and declaration thereof. fol. 58

CHAP. VIII.

Of the prohibition Leuiticall. fol. 67

CHAP. IX.

Of the prohibition Canonicall. fol. 71

CHAP. X.

Of the succesion of the statutes in marriage : and their force at this day. fol. 77

Faults escaped in the printing.

Pag. 15. line, 26. for that is descended, read, from whom is descended. Pag. 41. line, 17. for excesse, read accesse. Pag. 48. line, 24. in the note, for *Patrimonium*, read *Matrimonium*. Pag. 21. line 3. in the note, for Aa. 28. read an. 25. cap. 19.

The Triall of Baſtardie.

CHAP. I.

Of poſſeſsions and Natiuities, their cogniſance and triall.

THe iſſue of the defiled bed, before we come to handle it, either in it ſelfe or the contrary, leaſt happily the readers ſhould (ſome of them) looke for another iſſue here, than I know they be likely to finde, I meane a relation of pleadings in poſſeſſions, after the common lawes: I aduertiſe them before hand, howſoeuer this may ſeeme to fit the argument, *Hæc non iudicantur in Eccleſia*, The church hath no cogniſance of them.

The poſſeſſion of *Radulphus* and *Agatha* his mother, left them by *Radulphus* the father and grandfather to *Agatha* and hir ſonne, when he went to Ieruſalem, impeached afterwards by *F.* great vncle to *Radulphus* the ſonne, in that he obiected, this *Agatha* was begotten by *Radulphus* hir father, of *Auoline* the wife of *Alan*, in the time of *Alex.* 3. manifeſteth as much in the Canons.[a] For when the incidēt queſtion of hir natiuitie aroſe before the ſecular Iudges, it came

[a] Cap. cauſam quæ. Qui fil. ſunt legit.

came in the end to the audience of *Alexander*, who in his commiſſion in that cauſe of the Iuriſdiction of the church, to the BB. of London & Worceſter, (hauing touched the poſſeſſory Iudgement of the king) countermaunded immediatly againe his former reſcript in theſe wordes, *viz. Cauſam quæ inter R. & F. ſuper eo quod mater dicti R. dicitur non fuiſſe de legitimo matrimonio nata agitari dinoſcitur, vobis commiſimus terminandam: verũ quod literis noſtris inſeri fecimus, vt præfato R. poſſeſſionem omnium quorum poſſeſſor extitit, quando Auus ſuus proficiſcendi Hieroſolimam iter arripuit, ante principalis cauſæ ingreſſum faceretis reſtitui, ſi eadẽ poſſeſſione fuiſſet per violentiam ſpoliatus. Nos attendentes quod ad Regem pertinet, non ad eccleſiam, de talibus poſſeſſionibus iudicare, ne videamur iuri regis Anglorum detrahere, qui ipſarum iudicium ad ſe aſſerit pertinere, f. v. mandamus, quatenus regi poſſeſſionum iudicium relinquẽtes, de cauſa principali, videlicet vtrum mater predicti R. de ligitimo ſit matrimonio nata, plenius cognoſcatis, & cauſam huiuſmodi terminetis. &c.* that is to ſay, The cauſe or queſtion notoriouſly knowne to be moued betweene *R.* and *F.* touching that, that the mother of the ſayd *R.* is affirmed not to be borne in lawfull matrimonie, we haue committed to you to be determined; howbeit, where we cauſed to be inſerted in the ſame our letters, that you ſhould ſee the poſſeſſion of all things reſtored to the aforeſaid *R.* that he poſſeſſed when his grandfather tooke his iourney to Hieruſalem, before your entrance to the principall buſines, (if violently firſt he he had beene ſpoiled of the ſame) weighing that the Cogniſance of ſuch poſſeſſions appertaineth not to the church, but to the king, & leaſt we ſhould ſeem to derogate

derogate from the right of the king of England, who claimeth they pertain to himself, we require you (leauing the possessorie iudgement to the king) that you take absolute knowledge of the principall cause: that is to say, whether the forenamed *R.* his mother bee borne in lawfull matrimonie, & determine the same.

The politique bodie of this land considered as it is compacted of all sortes and degrees of people, deuided onely in tearmes, and by names of spiritualtie, and temporaltie: hauing auctoritie, the one part, commonly called the English Church, to declare, interprete, and shew any cause, question, or doubt of the Law diuine, or spirituall learning, and to administer such offices and dueties as to their roomes spirituall doth appertaine: the other, the lay or temporall Iudges, for triall of propertie of landes, secular contentions, as also the conseruation of the people of this Realme in quiet and peace, and howe they doe, both their auctorities and iurisdictions conioyne together in the due administration of iustice, the one to helpe the other, appointed so, ordained and instituted to that purpose and end, that the kings & queens of the same (according to their plenarie power from God) might be furnished of themselues to render iustice and finall determination to all subiects, and in all causes, as they haue and doe at this day hold (of God) to themselfe, and by their sword, their people and crowne: acknowledging no superiour on earth, without restraint or prouocation, to any pope, prince, or potentate in the world,[b] may giue a light to that we haue said of the spirituall and secular powers before.

[b] 24.H.8. cap. 12. in prohem. ad idem de repub. Anglo.

For howſoeuer they may ſeeme to be diſtinguiſhed in themſelues, they be but one body, hauing but one onely head, the royall and kingly maieſty of this land, where the Ariſtocraticall gouernmentes and Democraticall, haue been euermore ſtrange vnto vs: for deuided in times paſt into many & ſundry kings, reigning ech abſolutly in his country, not vnder the ſubiection of other, till by fighting, the vanquiſhed alwaies falling to the augmentation of the vanquiſher, it grew at the laſt into one Monarchy, neuer did any take inueſtiture at the Emperors hand of Rome, or any other ſuperior forraigne prince or Potentate, but held (as I ſayd before) and as they haue, doe, and will hold of none but of God, their people and crowne.

Hence it is taken for an Empire in the world: wherof (as did *Vlpian de publico romanorum iure*) I may as boldly write *viz. Huius ſacroſanctæ, & Auguſtæ ciuitatis ſtatus, in ſacris, & ſacerdotibus, & magiſtratibus conſiſtit:* that is to ſay, The ſtate of this imperiall commonwealth, conſiſteth in holie thinges, and in prieſts, and magiſtrates: for ſo we repute no leſſe the magiſtrate thã the prieſthood, to be ordained of God; as the apoſtle[e] teacheth, & whereof *Duarenus* dilateth thus, *viz. Sunt enim magiſtratus & ſacerdotium velut vnius corporis, id eſt eccleſiæ, duo membra precipua: quorum alterum alterius auxilio eget.* Verily they are (ſaith [d] *Duarenus*) the magiſtracie and prieſthood, as it were of one bodie, that is to ſay, two principall members of the Church; hauing need the one of the others aſſiſtance. And in another place, *Nam etſi religionis & ſacrorum procuratio omnibus alijs rebus nobis antiquior eſſe debeat, tamen im-*

[e] Rom. 13.

[d] De ſacris eccleſiæ miniſt. ac benefic. lib. 1. cap. 1.

perio

perio magistratus ad tranquilitatem inter homines tuendam est opus, sine qua, ne religio quidem consistere potest: Itaque Iustinianus noster maxima dei inter homines dona esse ait, [c] *sacerdotium, & imperium, quorum vnum diuinarum rerum administratio, alterum humanarum gubernatio moderatioque sit: non enim (vt apud hebreos quondam atque Romanos idem & reges erant & pontifices)* [f] *ita in Christiana repub. idem homo vtrang; personam sustinet, & vtrumque munus exequitur; sed duæ sunt functiones, diuersæ, quarum vnaqueque plurimum operis habet ac difficultatis: communis tamen est vtriusque finis, & scopus: nempe religionis, & mandatorum diuinorum, in otio & pace conseruatio. Hinc Iustinianus noster de consensu & concordia rerum diuinarum & humanarum, sacerdotij, & imperij loquens, simphoniæ verbo vtitur*: that is to say, The charge of religion, & of sacred things, though it ought to be (in antiquitie vnto vs) preferred before all things els, the power notwithstāding of the magistrate is needfull for the preseruation of peace amongst men; without the which religion verily cannot consist: *Iustinian* therefore affirmeth Priesthood and the Magistracie, the chiefest giftes of God amongst men, in that the one is the administration of diuine thinges; the gouernment the other, and moderation of things humane: for not (as in times past the same were kinges and bishops with the *Hebrewes* and *Romanes*) so in a Christian common-wealth now, the same man beareth and executeth the person and office of them both; [g] but they are two diuerse functions, requiring either of them great labour and difficultie. The end and scope notwithstanding of either, common to both; the conseruation namely of religion, and

[c] Nouel. 6.

[f] Euseb. lib. 1. Hist. Eccles. c. 5. c. cleros. 21. Dist.

[g] It is and was of ancient time due to the imperiall crowne of this realme to haue the soueraignty and rule ouer all maner persõs borne within the same, whether ecclesiasticall or lay: but the kings and queenes, neither haue, doe, nor will challenge authoritie and power of ministerie of diuine offices in the church. *Iniunct. an 1. Eliz. tit. Admonition.*

diuine commandementes, in quiet and peace. *Iuſtinian* hereupon treating of the concordance, and agreement of diuine and humane things, Prieſthood, and the Magiſtracie, vſeth the worde *ſymphonia*, as much as concent or harmonie in muſicke.

But to the ſtate of the cauſe, after the Latines, the iſſue in the common-law, in the canon and ciuill lawes, the incident queſtion, *Baſtardie*, whoſe triall our argument is, and whether wee will haſten our ſtile: the incident queſtion I call it, for it is not ſprung where it riſeth in the ſecular court *tanquam emergens in iudicio*, (ſuch as be ſaid in the lawes we mentioned laſt) to haue *originem nouam poſt iudicium incohatum, reſpicientes proceſſum*; but incidently, reſpecting onely *merita negotij principalis*, and not the *proceſſus* at all.

Here (affirmed that reuerend doctor Sir *Thomas Smith*,[h] ſpeaking of the iſſue generallie) is the place where the ſtrife & debate remaineth, as a water held in a darke and cloſe veſſell iſſueth out, is auoyded, and emptied, and no where els: and that ſtroke (ſaith he) well ſtroken, is the departing of all the controuerſies.

[h] De repub. Anglo. lib. 2. cap. 12.

Theſe we may leaue to whom they be more familiar in their termes, than they can, or at the leaſt is neceſſarie (touching this triall) they ſhould be made interpreted, to the common capacitie of the reſt. Hence iſſueth out our purpoſe: that is to ſay, the incident queſtion (effected) of the natiuitie, before the ſecular Iudges, in ſecular cauſes of poſſeſſion; the kings or queenes writ enſueth to this effect as followeth[i] to the Ordinarie, and there his Iuriſdiction beginneth.

[i] Infra. ca. 3.

CHAP.

CHAP. II.

The Canonicall and ſecular Computations (in conſanguinitie) their confuſion. The ſequell. The Lateran ſynod. The anſwere of the Prelates to the kinges writ of Baſtardie. Their Inſtance. The concluſion of the Nobles at Merton.

IN the Romane Ciuill and Canon ſupputatiõ of degrees, there inſueth nowe a difference to be handled in them: that is to ſay, a diſcent, or diſcord, or that which is more, a preiudice, and a violence too, to the Lawes, to the Canons, and either ſo to other: howbeit not in themſelues, but their application and practiſe: like a well tuned Inſtrument vnskilfully handled. Hence indured the ſecular lawes of this land an iniurie (in their poſſeſſorie Iudgementes) by the Canons, as alſo did in former time the Canons, by the ſecular ſort, till king *Henry* the third reformed (in the end) the one, the other, the Lateran ſynod; wherof wee ſhall treat ſeuerally in their places, but firſt of the violence to the Canons.

For declaration of this, (by the way) Computatiõ muſt firſt be conſidered of (in degrees of conſanguinitie or bloud) & how it is diſtinguiſhed by Canonicall and Legal: the computation canonicall is declared in the chapter of conſanguinitie hereafter, the legal or ſecular computation we haue briefly related here,

here, and that for two causes, the one (hauing occasion to speak of the preiudice to the canons) it is deriued from it, the other it shall explane the Canonical computation the better, therfore it is pictured here, according to the secular emperor *Iustinian* his lawes, to the end (I say) that compared with the figure ensuing of consanguinity it may ad the greater light vnto it, and either consequently vnto other.

These *Legal* and *Canonical* computations, I know not how it came to passe, but that I may vse the wordes of the Canon, *Quidam Legum & Canonum imperiti*, certaine as well Legists as Decretalists, ignorant both of the lawes and Canons, confounded them; what violence grew by this to the Canons ensueth, for when it had taken roote, this negligent or malitious error, (for so we may coniecture) they could not be so ignorant all of them, from whom it sprang, *Cencalogiæ terminũ Nuptialia iura, numerationem sanctorũ patrum, & antiquam Ecclesiæ cõputationem: peruersa quadam calliditate disturbare nituntur.* It disturbed, or they disturbed with it (this error) by their peruerse subtility, the bonds and scope of Genealogy, the laws of matrimonie, the holy fathers numeration, and auntient cõputation of the church: and besides their strange, prophane, and erronious cõputation, which they grounded vpon the secular lawes, they determined their Genealogie in the sixt legal degree, affirming there the Legal computation determined. But what *Iustinian* defined, and vnto what degree, (his secular computation) I leaue to *Iustinianistes* to define, onely to aunswere this error, his wordes be these, *Hactenus ostendisse sufficiat, quemadmodum gradus cognatio-*

natio-

nationis numerentur: namque ex his, palam eſt intelligere, quemadmodum vlteriores gradus numerentur: generata quippe perſona, gradum adijcit. When *Iuſtinian* had extended aſcending, deſcending, and collaterally his numeration, and ſpecified to the ſixth Legal degree; this may ſuffice (ſaith he) touching the computation of degrees in kindred: for by this it is eaſie to nũber the reſt that be further off; foraſmuch as a perſon begotten, begetteth a degree, &c. This touching their errour in determining the Legal computation onelie.

For their confuſion, I meane of both computations in one: were the infection thereof, as far forgone in marriages with vs, as it was confuted then in the Lateran counſell, we ſhould not, I ſuppoſe (after the phraſe of the ſcripture) come ſo neare to the ſhame of our kindred as nowe we doe: but hereof more, and more fitly hereafter.

To their period again, their *ſeries* in their Genealogie was legal: their computation legal, to the ſixt degree: but their termination, there, neither legal, nor Canonicall: What then? *Computatis namque gradibus, &c. aut finitur conſanguinitas in Sexto gradu, &c.* The Canon asketh this queſtion, *viz.* (Computation therfore had) doth it determine or not determine conſanguinitie in the ſixth degree? inferring thus: *Si autem finitur, fallaces erunt leges quibus iſti vtuntur, qui in decimo gradu ſibi ſuccedere conſanguineos iubent: quod ſi non finitur conſanguinitas in huiuſmodi ſexto gradu, falſidici erunt iſti qui vltra illum ſextum gradum nolunt computare conſanguinitatem: igitur aut leges erunt falſæ, aut*

iſti qui ſic finiunt generationem : ſed vt veridicæ leges, & veraces ſunt Canones, dicamus id quod veritas habet, ſcilicet quod non terminatur conſanguinitas in huiuſmodi ſexto gradu, &c : that is to ſay, Verily if it determineth ſo, they be deceiuable lawes which they vſe, that command ſucceſſion in bloud in the tenth degree : but if it determineth not cõſanguinitie in the ſixth degree, they ſhalbe falſe ſayers, that refuſe (in conſanguinitie) to make their computation beyond the ſaid ſixt dedegree : to conclude, the lawes muſt needes be falſe, or they that ſo determine generation. But as the laws be right, and the canons true, ſo let vs perſiſt in that, that trueth it ſelfe poſſeſſeth, namely (touching conſanguinitie in the *6* degree) in not determining there.

Their numeration remaineth nowe to be ſpoken of, their *Series*, their order, and (touching the ſame) the cenſure of the Lateran ſynod. Neither would I be taken to impeach their numeration, but the diſguiſed habit they gaue it. For it ſorteth, and ſo it is approoued with the ſecular lawes *i.* the law of their nation ſo called the Romane ciuil law, as alſo (after the reuerend authous Mr. *Bracton*, and Mr. *Plowden* : for ſo they haue applied it either of them in their works) of ours.

Touching the ſecular computation what may be ſaid for further information therein, wee referre to that demonſtration enſuing to the eye, according to *Horace: Certior aure arbiter eſt oculus*, that is to ſay, Of the two *i.* the eye, and the eare, the eye is the certainer iudge. *Hinc agrimenſores*, and the view *de ventre inſpiciendo* were & be in vſe in the ciuil law, as alſo (as occaſion

occasion is ministred) exercised in this land: thus we leaue them (the secular computations) to that relation that ensueth of the Lateran synod, *viz.*

Ad sedem apostolicam (for so the canon relateth the same) *perlata est quæstio nouitar exorta de gradibus consanguinitatis, quam quidam legum & canonum imperiti excitantes, eosdem propinquitatis gradus contra sacros canones, & ecclesiasticum morem numerare nituntur: nouo & inaudito errore affirmantes, quod germani fatres, vel sorores, inter se, sint in secunda generatione: filij eorum & filiæ in quarta, nepotes eorum vel neptes in sexto, taliquc more progeniem computantes, in huiusmodi sexto gradu eam terminãtes, &c. Nos vero (Deo annuente) hanc quæstionem discutere curauimus: in synodo habita in lateranensi consistorio, conuocatis ad hoc opus episcopis & clericis atque iudicibus diuersarum prouinciarum: Denique diù ventilatis legibus, & sacris canonibus, distinctè inuenimus: ob aliam atque aliam causam: alteram legum fieri, alteram canonum computationem. In legibus siquidem ob nihil aliud ipsa graduum mentio facta est, nisi vt hereditas vel successio ab vna ad alteram personam (inter consanguinios) deferatur. In canonibus vero ab hoc progenies computatur, vt aptè monstretur vsque ad quotam generationem a consanguineorum nuptijs sit abstinendum. Ibi prescribitur vt hereditas propinquis more legitimo conferatur: hic vero vt ritè & canonice inter fideles nuptiæ celebrentur. In legibus aistinctè non numerantur gradus, nisi vsque ad sextam: in canonibus autem vsque ad septimam distinguitur generationem. Hac ergo de causa, quia hereditates nequeunt deferri: nisi de vna ad alteram personam, idcirco curauit secularis imperator in singulis personis singulos perficere gradus: quia vero nuptiæ sine duabus non valent fieri personis, ideo sacri*

canones duas in vno gradu conſtituere perſonas,&c. that is to ſay, A new-found queſtion is propoſed to th'apoſtolique Sea of the degrees of conſanguinitie, the which certaine mouing, vnskilfull in the lawes and canons, contrarie to the ſacred canons, haue ſtriuen to confound them: in a ſtrange and new errour affirming, that German brothers and ſiſters are betweene themſelues in the ſecond generation, their ſonnes and daughters in the fourth, their nephewes and neeces in the ſixth, & making their computation of their progenie ſo in the ſaid ſixt degree they determine it,&c. Now we in a ſynod holden in the Lateran conſiſtorie, aſſembled thereunto, the Biſhops, Clergie, and Iudges of diuerſe prouinces, haue had care to diſcuſſe this queſtion: and after long examination had (in the end) of the lawes and canons, we found it out diſtinctly, at the laſt, one computation (for this and that reaſon) to be had of the lawes, an other of the Canons: for mention verily is made in the laws of degrees, to no other end but that ſucceſſion or inheritance ſhould deſcend (in conſanguines) from one to another: but in the canons for this; that it may manifeſtly be ſhewed to what degree in kindred, marriages ſhould be abſtained from; it is preſcribed there, that inheritance ſhould lawfully be conferred to the next; here, that mariages be rightly amongſt chriſtians, and Canonically celebrated: degrees in the laws, are not in names and tearmes diſtinguiſhed, beyond the ſixt degree; in the Canons to the ſeauenth generation: for this conſideration therefore in perſons, that ſucceſſions cannot paſſe but from one to another, the ſecular emperour prouided

uided to appoint in ſingular perſõs, ſingular degrees: but that mariages conſiſt not but of two, the ſacred Canons haue therefore in one degree ordained two.

M. *Beza* reproueth this numeratiõ of the Canons, becauſe the Canons number (as he ſaith) by the perſons, and not their generations; and therefore affirmeth, that *Multo planius & rectius loquuntur, qui generationes, non perſonas enumerãdas dicunt.* They ſpeak (ſaith M. *Beza*) more plainly ſaie, and more truely, that affirme the generations, and not the perſons to be numbred, and his reaſon is, *Cum generatio efficiat gradum*, that is, Becauſe the generation makes the degree. Indeed there were certaine Canoniſts, before the Lateran ſinod, and Legiſts too, that numbred ſo, whoſe ignorance was condempned there, but neuer ſince but in earthly ſucceſſions, and ſo they number ſtill, that is to ſay, the degrees by the perſons, to conferre their inheritance to the next; but by the generations, the Canons number the degrees in mariage cauſes, that we come not too neer to the kindred of our fleſh: wherein they varie not from M. *Beza* at all, but onely in the equilaterall lines, where he maketh two brethren two generations, & their children foure, & ſo in the reſidue where their generatiõs be, & ſo he affirmeth thẽ to be *eiuſdem*, euen of the ſame *ſpeciei & ſeriei*, by the order & courſe of nature, & therfore do the Canons make thẽ the ſame generations, and the ſame degrees, and ſo his wordes many ſeeme to import no leſſe where he ſaith, *Natura enim ipſa oſtendit tot opportere gradus, quot ſunt generationes*, that is to ſay, Euen nature her ſelfe doth ſhew, ther ought to be ſo many degrees, as there be generatiõs: neuertheleſſe

De repud. pag. 25.

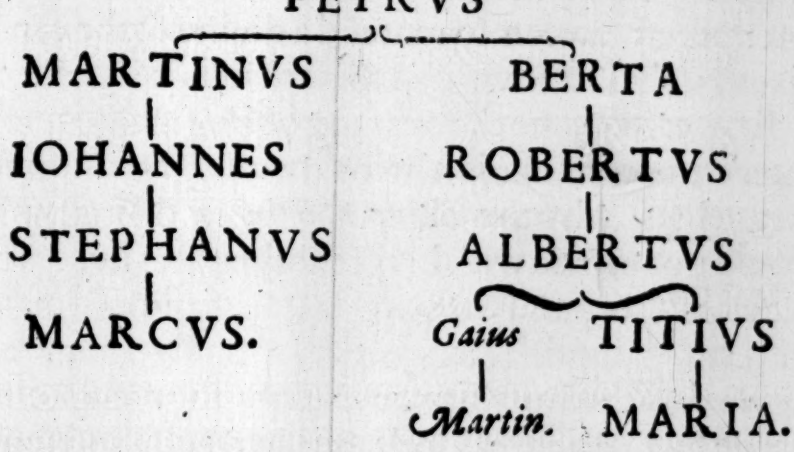
De repud. pag. 26.

Pag. 26.

theleſſe we muſt count thē ſo, (ſaith he) as we reſpect *Ordinem numerandi*, and make them ſo by the order and courſe of numbering, two generatiōs: the which he holdeth in all the laterals, to be holden without exception, as may appeare by that treatiſe: that is to ſay, ſo many perſons ſo many degrees; the Canons hold the ſame in the aſcending and deſcending lines, *Vna dempta:* the vſe of this rule is explaned, in the chapter of conſanguinitie hereafter: this M. *Beza* reproueth alſo, *viz.* the rule of *Vna dempta*, and yet hee confeſſeth it hath nothing in it, that is differing from the truth, for ſo he writeth, *Et ſi nihil ſtatuit à veritate alienum, tamen non recte concepta eſt*, that is to ſay, Though it ordereth nothing that is differing frō the trueth, yet it is not conceiued aright: but let it ſuffice it be true and holdeth where the Canons vſe it, that is in the aſcending and deſcending lines, vpright and downeright ſtraight, they bend it not to the laterals, for it will not hold with the rule of generation there, wher the perſōs do ſpread thēſelues, or nature rather ſpreadeth the perſōs on either ſide. Here is their difference in the equilaterals only where M. *Beza* giueth libertie to marrie within the prohibition of the Canons, but his prohibition is the ſame with the Canons in the reſt, ſo far as the Canon prohibition reacheth, except in the perſons that be not collateral or vice-parents & childrē the one to the other: & the ſame their rules with his of the collateral or vice-parent, & of the honeſty of nature, only his prohibition goeth beyond the prohibition of the Canons, in the laterals that be not equal, wherin ſo much the nearer he draws thē to the law of nature, as he carries them further

Pag. 15

further off from the kinred of their fleſh, this is ſeene in that example, *viz.*



For he prohibiteth *Martin* to marrie with *Marie*, (his grandfathers neeces nephues neece) becauſe he may not marry with *Bertaes* daughter, that is, with his ſiſters daughter: and this he confirmeth by the rule of the honeſty of nature, which is this, *Cũ naturæ honeſtate pugnat, vt cuius filiam ducere non potes, neptim poſsis*, that is to ſay, It is againſt the honeſtie of nature that thou ſhouldeſt marrie with his or hir neece, whoſe daughter thou canſt not marrie: this for his prohibition. But for his libertie, touching that we haue ſayd before, let vs ſuppoſe *Albertus* hath an equilaterall ſonne vnto *Titius*, *viz* a brother that is diſcended, a ſecond *Martin*, this *Martin* ſhal marrie with this *Marie* his grandfathers neece, and yet his father is *Maries* firſt collateral parent, that is to ſay, hir fathers brother, notwithſtanding both the rule of collateral parent, and the rule of the honeſtie of nature, which ſhould ſeeme as well to hold in the one as the other, for *Martin*

tin may not marrie with his grandfathers daughter, that is, his aunt, by the expreſſe leuitical prohibition; why ſhal he then marry with his neece, whoſe daughter he may not marrie by the former rule ? I will not determine between ſo reuerēd a diuine & the canon lawes, only I haue written this, that ſuch as haue or ſhall hereafter haue the reading of that treatiſe, may enter into conſultation with themſelues amongeſt themſelues, why the elder *Martin* in this example ſhould not marrie with his graund-fathers neeces nephewes neece, and the yonger *Martin* ſhould marrie with his graund-fathers neece ? onely I may cite S. *Ambroſe*, who affirmed plainly they might not marrie by the lawe of God: but Mr. *Beza* anſwereth that S. *Ambroſe* affirmed this *memoria lapſus*, as much to ſay, as forgetting himſelfe. To this I may cite another that writeth thus, *Quia vero* Beza, *hanc iuris canonici computationem ridet & improbat ideo ſciendum & obſeruandum eſt quod in conſiſtorijs harum terrarum (non obſtante conſideratione* Bezæ) *computatio iuris canonici obſeruetur, & ſecundum eam pronuncietur*: *i.* Where (ſaith he) Mr. *Beza* derideth and reproueth the computation of the canon lawe, it is therefore to be noted and obſerued, that in the conſiſtories of theſe prouinces of ours, the computation of the canon law muſt be obſerued, notwithſtanding the conſideration of *Beza*, and be pronounced after it.

Ambr. lib. 8. Epiſt. 66.

Ioachim. a Beuſt in admonitione de grad. pag. 230.

And ſo the computation of the lawes of our land, ſpiritual or lay, muſt be obſerued, and be pronounced after them in theſe prouinces of ours, notwithſtanding the conſideration of any.

And this computation is naturall: whereof more

at

at large in the chapter of conſanguinitie hereafter. Thy *ius primogeniti*, thy fathers inheritance, take it by the legall figure, it is lawfull for thee, and number vnto that, by that computation there, *viz.* Father, Sonne, 1. 2. and ſo in order in the reſidue. But ſeeke not a wife by that computation, in the other that inſueth; namely the canonicall figure, ſpecially in the midſt of the tree, thou haſt no portion there: thou ſhalt not come neere it, but touch it not in any wiſe: it is the kindred of thy fleſh, yea, thy fathers bloud, which forced, he that caſt out *Adam* from the garden of Eden, and ſet the cherubins there, and the blade of a ſword, to keepe the way of the tree of life, hath ſaid, That bloud ſhalbe vpon thee: and though thou tarrieſt (*i.* Thou dieſt not the death) becauſe the iudiciall is gone, yet the morrall law abideth, which thou tranſgreſſeſt, and neuer dwelleſt long in that ſeede, and thy fathers inheritance togither: for the Lord hath ſet a ſword, to keepe the way thereof, from that poſteritie. Gen. chap. 3. Leuit. chap. 20.

It commeth thus to paſſe that two legal degrees do make but one canonicall: brothers (for example) reckoned after the ſecular lawes in the ſecond degree in legal ſucceſſion; after the canons be numbred in the firſt, in cauſes of matrimonie: their children (there) in the fourth, here in the ſecond: (there) their nephewes in the ſixt, here in the third, and ſo deſcending ſtill in the collateral lines (for otherwiſe they differ not) the 8 and 10 by the lawes, the 4 and 5 by the canons, and ſo of the reſidue.

Theſe computations mentioned here before, not regarded in their ſeuerall natures, wrought the con-

fuſion and violence we haue mentioned. Now to apply the ſame to our purpoſe, let them iudge that haue skill and reaſon to diſcerne, what violence the royall dignitie and ſecular lawes of this land haue, and haue hazarded to indure by the like; Verily the inconſiderat computation of degrees (without regard of the lawes and the canons) in the one, and the generall eſtimation (without limitation of Baſtardie) in the other, maketh them not vnlike; the one we haue handled alreadie, let vs but weigh the other.

That it was (the general eſtimation without limitation of Baſtardie, as were the ſecular lawes to the canons) a generall violence (in that kind) to the laws of this land, Mr. *Bracton* his report in the raigne of king *Henry* the third may ſuffice: for being then, as it is at this day, the canonicall eſtimation of Baſtardie, touching onely orders, honours, and dignities in the church; the ſecular eſtimation then, as now, touching legal ſucceſſions; and the lawes then, as now, diuerſe; for ſo the things be diuers, impertinent either to others iuriſdiction: generalitie in obiecting Baſtardie begat in the ſecular court obſcuritie in anſwering, proceeding from them both a tranſmiſſion of the ſame nature to the Ordinarie: the Ordinaries certificat from thence; and hence the violence we be handling to the laws: to the which Mr. *Bracton* hath written thus, *viz.* *Proponi quidem ſolet* (ſpeaking of the obiection of Baſtardy) *aliquando cum adiectione cauſæ quare Baſtardus ſit, & quandoque ſine cauſa: ſed quoniam vbi cauſa nō adijcitur ſub tali reſponſione poterit, eſſe obſcuritas, & incertitudo, &c. Si inquiſitio ex tali obiectione & reſponſione ſtatim mittatur ad curiam chriſtianitatis, ita po-*

terit

terit quidem probatio quælibet indifferenter fieri in curia chriſtianitatis: quæ in quibuſdam contraria eſt legi, & conſuetudini Angliæ, that is to ſay, Baſtardie verily was woont to be obiected ſometime with th'allegation of a cauſe, *viz.* Why he ſhould be Baſtarded; ſometimes without: but becauſe where no allegation is made, the anſwere there may be made obſcure, and incertaine, &c. from ſuch an obiection and anſwer, if tranſmiſſion ſhould be made to the Ordinarie, ſo might euery proofe indifferently be made in the court chriſtian: which (in certaine points) is contrarie to the law and cuſtome of this land. This ought not therefore (ſaith he) to be, ſithence to tranſmit vnder ſuch obſcuritie an Inquiſition to the ſpiritual court, is nothing els to be, than oppoſite to the law and cuſtome of England.

It was not therfore ſufficient to obiect (in the end) Thou haſt no right becauſe thou art a Baſtard: but with this addition, which after the lawes of this land they terme *adiectionem cauſæ: i.* Thou art a Baſtard in that thou wert borne before wedlocke: thy father neuer eſpouſed thy mother, &c. But hereof more in the chapter of tranſmiſſion to the Ordinary, the chap. *viz.* immediatly enſuing here.

Let vs now but looke a little to that we haue handled alreadie, and behold our purpoſe at hand. The ſecular lawes regarded not coniunctions: the canon lawes regarded not ſucceſſion: Conſanguinitie, yet they regarded both: ordained both for the ſame, and made their computations both: but the lawes themſelues diſtinguiſhed, the lawyers diſtinguiſhed not: the ſequele we haue touched, and now we will

proſecute the example particularly.

The Lawes we haue ſaid of the Church and this Realme of England, be diuerſe in their eſtimation of Baſtardie: that is, they repute it diuerſly. The canons diſtinguiſh here, Legitimation enſues (by the canons) a ſubſequent marriage, in certain caſes they diſpence: the lawes diſtinguiſh not, they reſpect not marriages that enſue, they diſpence not: neuertheleſſe they diſable not (the laws of the land) the legitimation by the canons in orders and prieſthood: *Ad ea vero quæ pertinent ad regnum* (after Mr. *Bracton*) [n] *Non ſunt legitimi nec heredes iudicantur, propter conſuetudinem regni, quæ ſe habet in contrarium*: that is to ſay, Touching the ſecular iudgementes of this Realme, they bee not legitimat nor iudged to be heires, for the contrarie obſerued cuſtome in this land. The Arch-Deacon (for example) of Yorke [o] vnlawfully firſt elected to that dignitie in the church of Worceſter, touched in his natiuitie, many things induced (eſpecially concurring) his deſpenſation in the Canons, *viz. Literarum ſcientia, morum honeſtas, vitæ virtus, famæ perſonæ, concors capituli electio, petitio populi, aſſenſus principis, ſuffraganeorum ſuffragia, humilis deuotio confitētis*, that is to ſay, His knowledge in learning, his honſty in maners, the vertue of his life, the report of his perſon, his agreeable choyſe of the chapter, the peoples requeſt, the prince his aſſent, the ſuffagranes voices, his owne humilitie, which freely choſe and humbly to acknowledge rather his defect, than hee would *Læſa conſcientia*, aſſume the paſtoral office with a wounded conſcience. To conclude, ſuch bee the lawes and iudgements of the church, their allow-

[n] De acquirend. rerum dom. cap. 29

[o] Cap. innotuit. De elect.

ance

ance ſuch, & diſallowance (by the lawes of the land) as ſhall be their practiſe and excercise ſpirituall or Lay.[p]

[p] H. 8. Aa. 28. cap.

To end in a word this generall and obſcure tranſmiſſion to the ordinary, note by the way, what a ſubtill fallation enſued, *viz.* a certificate to the ſecular court, neyther true nor falſe: for ſo, *& verum reſcribatur, & falſum, i.* The ordinarie may certifie both right and wrong in diuerſe reſpects, for hee may certifie *Mulier*, that is to ſay him, a legitimate, and rightly too, to orders and dignities: but of the land, *Baſtardus*, that is, To inheritance a baſtard. This for the preiudice to the laws.

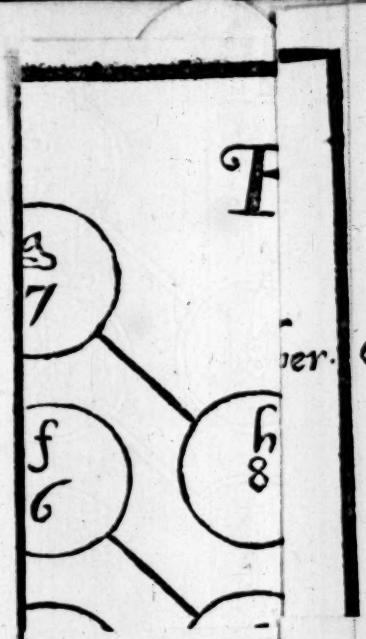
Touching now the king, the prelats, his obiection, their anſwere, their inſtance, and the nobles their concluſion at Merton, *Craſtino ſancti vincentij, i.* The morrow after the feaſt of S. *Vincent* (there) the Archbiſhop of Canturbury, his ſuffagranes, and greateſt part of the earles and barrons of this land aſſembled to the Corronation of the king, and queene *Alianour* his wife, treating of the common wealth of the ſame, touching many articles that concerned both the king & the queene, to the which they were ſummoned al, this obiection (tearmed in the ſtatutes, The kings writ of Baſtardy) amongſt othe matters was handled, *viz.* Whether one beeing borne afore matrimonie, may inherit in like maner as he that is borne after matrimonie. All the Biſhops aunſwered vnto this, That they would not nor could not anſwere vnto it, becauſe it was directly againſt the common order of the church, and all the Biſhops inſtaunted the lordes that they would conſent that all ſuch

as were borne afore matrimony ſhould be legitimat, as well as they that be borne within matrimonie, as to the ſucceſſion of inheritance, for as much as the church accepteth ſuch for legitimate: and all the earles & Barons with one voice anſwered, That they would not chaunge the lawes of the realme, which hitherto hath been vſed and approued.

Poſtea verò die Iouis proximè poſt feſtum ſancti Dioniſij, that is to ſay, The thurſday next enſuing the feaſt of *Dioniſius*, the ſame yeare, the king in his court holden at *Merton*, and namely before the moſt reuerend fathers the archbiſhops of Canterburie and Yorke, the Biſhop of Chicheſter, lord Chancelor then, the BB. of Dureſme, Ely, Norwich, London, Bath, Exceſter, Carleil, Hereford, Rocheſter, and many other honourable perſonages, prouided when Baſtardy ſhould thenceforth be obiected, in the kinges ſecular court againſt any for ſuch a cauſe (that is to ſay, Thou art a Baſtard, and therefore, Becauſe thou wert born before thy father and mother their mariage ſolemniſed) there ſhould be ſent *Loquela* (as much to ſay, as that tranſmiſſion we haue mentioned) to the ordinarie, to this effect, and in this form of wordes *viz.* That Inquiſition be made whether ſuch or ſuch were born before ſpouſals or matrimony, or not: and that the ordinarie ſhould certifie againe, the king in the ſame forme of words, without ambiguitie.

The vſe of this figure and readie vnderſtanding.

THe vſe hereof is practiſed daily in inheritances, whoſe right deſcendeth *Quaſi ponderoſum quid cadens*



The signification of the compasses and characters of this Figure.

g	Great vncles great vncles vncle. The same aunt.	7
h	*His, hir sonne daughter.*	8
i	*his, hir, nephew neece.*	9
k	*is, hir, nephews neeces sonne daughter.*	10
l	*his, hir, nephews neeces nephew neece.*	11
m	*his, hir, nephews nephews neeces neeces son daughs.*	12

eadens deorſum, recta linea vel tranſuerſali; neuer aſcending againe the way that it came, except it be *à latere, propter defectum hæredum inferius prouenientium*: that is to ſay, Inheritaunce deſcendeth (like a weighty or pōderous thing, that falleth downewards) in a right, or collaterall line, neuer aſcending the way it came again, but laterally or ſideward, for want of deſcēding heires. It is thus to be vnderſtood, ✠ is that perſon in this figure, whoſe diſtance in degree is demaunded from euerie other peſon in the ſame, vpwards, downward, or collaterally, on the fathers or the mothers ſide; this is made manifeſt in the *6.* chap. of this treatiſe, together with the order of numbring the degrees in either computation. Now for the ſignification of the compaſſes, (in this figure) and letters expreſſed in the ſame, as well great as ſmall, this is expreſſed on the ſide of this figure, thus: *viz.* by the great letters, and the ſmall that be lincked vnto them: for example, capitall F. hath ſix little letters lincked vnto it, there is writen ouer F. (the ſtocke) what tearme it hath in conſanguinitie, after the laws, and what degree vnto ✠ whoſe aſcending ſtock he is; there is alſo written vnder euery other litle letter that is linked vnto F. the tearme & degree it hath likewiſe vnto ✠, whoſe Collateralls they be: the ſame of euery capital letter, and of their generations. This may ſuffice for the aſcendents and collaterals; the deſcendents be declared in the figure.

CHAP. III.

The Transmission or writ of certificat to the Ordinarie. The Statutarie antecedents to the same.

REx venerabili in christo W. eadem gratia Lincoln. episcopo salutem. Sciatis quod cum A. in curia nostra, coram nobis vel coram Iust. nostris peteret versus B. tantam terram cum pertinentijs in tali villa, idem B. venit in eadem curia, coram &c. et obiecit eidem A. quod nullum ius habuit in terra illa eo quod Bastardus est, quia natus antequam talis pater ipsius A. desponsauit matrem ipsius A. Et ideo vobis mandamus, quod conuocatis coram vobis conuocandis, rei veritatem inde diligenter inquiratis. viz. Vtrum prædictus A. natus fuit antequam prædictus talis desponsauit talem matrem ipsius A. vel post, & inquisitionem quam inde feceris scire facias nobis vel iusticiarijs nostris talibus, per literas vestras patentes teste, &c. The cause of this obiection in this writ of Bastardie is Prioritie of the natiuitie to the spousels that ensued: the wordes therefore be (here) after Mr. *Bracton* omitted, that be inserted in the other that ensue, *viz. Et quoniam huiusmodi inquisitio pertinet ad forum ecclesiasticum.* For example, *Rex tali episcopo salutem Sciatis quod cum A. peteret versus B. tantam terram cum pertinentijs in tali villa vt iu: sumu & idem. B. venerit in eadem curia & diceret quod fuit in seysina in eadem terra sicut de illa quæ hereditarie descendit de quodam C. patre suo cuius heres ipse est vt dicit, idem A. obiecit eidem B. in eadem curia nostra quod nihil*

iuris

iuris potuit habere in terra illa petita quia Baſtardus eſt, & natus de adultera, aſſerens ſe eſſe filium legitimum ipſius. G. heredem, & quoniam huiuſmodi cognitio ad forum pertinet eccleſiaſticum vobis mandamus quod (conuocatis conuocandis) &c. vt ſupra : the reaſon of difference is this, Tranſmiſſion (there) is arbetrarie, neceſſarie here : for (ſaith Mr. *Bracton*) *Nihil pertinet ad iudicem eccleſiaſticum cognoſcere de prioritate & poſterioritate natiuitatis eius cui opponitur Baſtardia, cum ſponſalia vel matrimonium hinc inde conceſſa ſunt:* that is to ſay, The ſpiritual iudge hath no cognition (where ſpouſals or matrimonie be confeſſed on either part) of prioritie or poſterioritie of his natiuitie, to whom Baſtardie is obiected : with whom accordeth the treſ-reuerend Iudge, ſir *Robert Brooke*, affirming it hath been tried by the countrey : where he diſtinguiſheth betweene generall and ſpeciall Baſtardie. The other Tranſmiſſion, or rather in the other caſe, is neceſſary, becauſe (ſaith Mr. *Bracton*) *Non pertinet ad iudicem ſecularem diſcuſsio, vtrum ſit ibi matrimonium vel non*, The deciding of matrimony, or not, appertaineth not to the ſecular Iudge.

To the common vnderſtanding of all, briefly, the writs wee haue mentioned immediatly heere before proceeded the one of them from this obiection, *viz.* Birth or natiuitie before mariage ſolempnized : the other from this, *viz.* Iſſue of a colourable wife, an adultereſſe, a wife *de facto*, and not *de iure*, to him that is lawfully wedded to another, or haply to none : in our vulgar ſpeech, and after the plaineſt faſhion, a whore : more ciuilly after cuſtome and common curtiſie, a concubine, a leman, or ſuch as was the woman of Samaria, *i.* A wife without a husband.

But we muſt not (by the way) confound or ſeeme to make all one the whore, the adultereſſe, and the concubine, ſo termed in the canons, *ſcortum*, *mæcha*, *amica*, or *concubina*; they bee verily diſtinguiſhed (there) [q] *Per aliud, & aliud*, by one, and another, that is to ſay, The whore is one, the adultereſſe another, the leman another, whoſe miſliuinges and miſconſtruction of my wordes togither, may terme them haply whores all three: but note their difference, that is to ſay, The whore, hir common requeſt makes hir a votoreſſe of ſingle life, for ſhee will not wed. The adultereſſe, of *adulterium*, as much to ſay, as *ad alterius thorum*, hir proprietie is hir husbands, but her propertie hir owne: Now, the concubine is holden at the will of her lord. They be alſo diſtinguiſhed by their offſprings, *Manſeres*, *Nothos*, and *Spurios*. Hence ſprang theſe verſes in Latine:

[q] 36. Q. 1. Lex illa. Aliud eſt fornicatio: aliud ſtuprum: aliud adulterium: aliud inceſtus: aliud raptus.

Manſeribus ſcortum, ſed mæcha nothis dedit ortum,
Vt ſeges à ſpica, ſic ſpurius eſt ab amica.

Theſe Latine verſes from the gloſſe I haue rudely engliſhed thus, *viz.*

The whore doth manſer Baſtard bring,
The nothos baſe th' adultereſſe wiſe:
As from the eare the corne doth ſpring,
The leman is baſe ſpurius life.

A Third tranſmiſſion enſueth to the court chriſtian to this effect, *viz.* *Rex tali epiſcopo ſalutem. ſciatis quod cum A. in curia noſtra coram, &c. peteret verſus B.*

tantam

tantam terram cum pertinentijs in tali villa vt ius ſuum, idem B. venit in eadem curia & dixit quod predictus A. nihil iuris clamare poterit in terra illa quia Baſtardus eſt, eo quod C. pater ſuus cuius heredem ſe facit nunquam deſponſauit matrem ſuam, & quoniam huiuſmodi cognitio de tali Baſtardia obiecta ad forum pertinet eccleſiaſticum, vobis mandamus quod (conuocatis conuocandis) coram vobis, &c. vt ſupra, Here they were the parties (by the obiection of the aduerſe part) the parents namely of him or hir to whom this obiection was made, and from whence this writ proceedeth, affianced, betrothed, and contracted; they wanted onely the Churches benediction. *i.* They were neuer ſolemnly nor vnſolemnly married in the face of the Church, nor elſwhere: heereof more largely in the chapter of matrimonie hereafter.

The fourth and laſt tranſmiſſion that wee purpoſe here to treat of, is conceiued in this forme of words, *viz. Rex tali epiſcopo ſalutem. Sciatis quod cum A. in curia noſtra, &c. peteret verſus B. tantum terræ cum pertinentijs in tali villa vt ius ſuum, idem B. venit in eadem curia & obiecit eidem A. quod nihil iuris inde clamare potuit quia Baſtardus eſt, eo quod natus fuit per tantum tempus ante matrimonium contractum ſolemniter in facie eccleſiæ inter talem patrem ipſius A. reſponſum fuit a predicto A. quod natus fuit poſt matrimonium cõtractum inter patrem & matrem ſuam tempore interdicti, adhibita omni ſolemnitate que tunc potuit adhiberi. Et quoniam huiuſmodi cauſæ cognitio, &c. vt ſupra*, Queſtion was moued here of the natiuitie *ratione interdicti eccleſiæ*: that is to ſay, Grounded vpon the prohibition of the canons; hereof likewiſe in the chapter prohibition canonicall: this may ſuffice for

the writ or tranſmiſſion to the Ordinarie, and ſo we be come to the ſtatutarie antecedents to the ſame. The occaſion whereof was, a fraud obiected in parlement, in 10 of king *Hen.6.*

This obiected fraud was touched in general terms by Mr. *Bracton* in the reigne of king *Henrie* the third: for writing (then) of th'effect of legitimation, [f] his wordes be theſe, *viz. Effectus vero legitimationis probatæ hic eſt, quod cum ſemel probata fuerit & iudicium protali reddatur in curia regis, ſemper quoad omnes legitimus erit, niſi in probatione interuenerit fraus, &c. ſed fraudulenter poſſet fieri inquiſitio hoc modo, vt ſi quis plures terras vel amplus hæreditates peteret à diuerſis, procurare poterit petens per fraudem, quod ab aliquo ipſorum ei opponeretur Baſtardia, & ita paciſci cum eo, ne quid diceret in teſtes, & contra teſtificata: & ſic fraudulenter probare poſsit legitimationem; & hic obtinere verſus omnes: quod quidem eſſet iniquum*: The effect (ſaith he) of legitimation is this; that once proued, and iudgement thereof giuen in the kinges Court, hee ſhall be alwaies reputed and with all men a legitimate, except there ſhall happen to fall out and be fraud in the proof, &c. But thus th'inquiſition may fraudulently be made, that is to ſay, If one demaundeth diuerſe landes, or ample hereditamentes of diuerſe men, the demandant may procure by fraud, that Baſtardie (by ſome one) be obiected againſt him, and couenant therewithall that hee excepteth not (at the time) againſt his witneſſes, their perſons, or depoſitions: and ſo hee ſhoulde prooue his legitimation, but fraudulently, and conſequently preuaile againſt all the reſt: but this were verie vniuſt.

[f] De legib. & conſuet. ang. lib. 5. tit de except. n. 17.

This

This fraud how neer it commeth to the obiected fraud in the ſtatutes, the readers may eaſily diſcerne. But to our purpoſe, hence proceeded the Statutarie antecedents, mentioned to be handled in this chapter; to eſchew as well ſuch ſubtil diſherisons, (if need ſhould be) in that ſaid caſe, as in other the like in time to come: touching therefore theſe Statutarie antecedentes, it was (by the aduiſe and aſſent of the ſpirituall and temporall lordes, as alſo the ſpeciall requeſt of the commons in that Parlement aſſembled) ordained and eſtabliſhed by authoritie of the ſame, as followeth, *viz.* That from henceforth all Iudges of or in the courtes, where anie plee is, or ſhalbe depēding, taken, or moued, in which Baſtardie is, or ſhall be alleaged againſt anie perſon party to the ſame plee, and thervpon an iſſue ioyned, which by the law ought to be certified by the Ordinarie, that the Iudges, or one Iudge, of, or in the courts where the ſaid plee is, or ſhal be depending, taken, or moued (before the time that any writ of certificate paſſe out of the ſame court to the Ordinarie, to certifie vpon the iſſue ſo ioyned, or to bee ioyned) ſhall make a remembraunce vnder their ſeales, or his ſeale, at the ſute of the demaundant, or tenaunt, playntife, or defendaunt in the plee, in which the Baſtardie is or ſhall bee alleaged; reciting the iſſue that is ioyned in the ſame plee of Baſtardie, and certifying to the Chauncellor of the king of England for the tyme beeing, to the intent, that thervpon proclamation be made in the ſaid Chauncery by three moneths, once in euery month, that all perſons pretending any intereſt to obiect a-

gainſt the partie, which pretendeth himſelfe to be *mulier*, that they ſue to the ordinarie, to whom the writ of certificate is, or ſhalbe directed, to make their allegations and obiections againſt the partie which pretendeth himſelfe to be *Mulier*, as the law of holie church requireth, and the ſayd chauncellor hauing notice of the ſayd remembrance and iſſue ioyned, and required by the ſaid demaundant or tenaunt, plaintife or defendant, hauing the ſaid remembrance to make the ſaid proclamatiō, as afore is ſaid, the ſame chancellor for the time being, ſhall do to make proclamation in forme aforeſaid, and the proclamation ſo made, ſhall certifie in the court where the ſaide plee, in which Baſtardie is alleaged one other time ſhalbe depending, and that the Iudges of or in the court where the ſame plee is, or ſhalbe depending, taken, or moued, before any proclamatiō ſo to be made in the chauncerie, make one time ſuch proclamation in the court, and alſo one other time, when the proclamation ſhalbe certified by the chauncellor of England, and made in forme aboue rehearſed; and then the ſaid Iudge ſhall award the ſaid writ of certificate to the Ordinarie, to certifie vpon the iſſue ſo ioyned, or to be ioyned; and if any writ of certificate be made or graunted before that all the proclamations in the forme aforeſayd be made, and certified, that then the the ſaid writ of certificat, and the certificate of the ordinarie therevpon made, or to be made, ſhall be void in law, and of none effect.

Thus much touching the Statutarie antecedents, I haue thought good to deliuer verballie as I read and receiued the ſame from the Statute it ſelfe.

CHAP.

CHAP. IIII.

The Ordinarie his office: and order in proceeding.

THe court christian is possessed (now) of the cognisance, the secular Plee in suspence *quousque, i.* till returne be made of the inquisition againe: the Ordinaries office (in order) ensueth next: But first we wil define the Ordinary, then his office, and shew withall (as what) how manifold his office is.

It requireth (this) a larger discourse, and euerie branch it beareth, than is cõueniẽt here, or possible to be related in so small a content; it is therfore reserued (this) to a treatise of it selfe, intituled *The Ordinarie*, as life, health, habilitie, and other opportunities may finish it, onely here, according to the nature of the proces, and this cognition which is summarie, it shall suffice to relate it summarily.

The Ordinarie is he, *Cui à lege vel ab imperiali culmine competit ius dicendi potestas. i.* [t] To whom is power giuen, and auctoritie from the law, or from the Prince, to render iudgment: *ad vniuersaliter, i.* Vniuersallie. For there be many Ordinaries, according to the verse, *Illustris primus medius, spectabilis imus*, but such an Ordinarie here (by the title of Ordinarie) we must vnderstand, that is to say, to whom is power giuen and auctoritie, from the law, or from the prince, to render

[t] 2.q.6.c.in iudic.

render iudgement vniuersaly, such be the BB. of euery prouince: howbeit their iurisdiction is not (in this cognisance) ordinarie, but *delegata*: such as the iurisdiction is, *quæ demandatur à principe specialiter ad vnam, vel plures causas.*[v]

[v] ff. de iurisdict. om. Iud. L. morte. de offi. delegat. Quoniam. & Cap. super. & cap. pastoralis. x. Autent. de defensor Ciuit. ¶. nos igitur, & ¶. audient. Colla. 3. y Autent. eod. d. ¶. audient ff. de iurisdict. om. Iud. L. fin.

The vnder or inferiour Ordinaries, principally such as be surrogates abroad in exempted iurisdictions, we will not handle here, but els where, and there in their places, *Hi enim leuia tractant, i.* Their iurisdiction consisteth in lighter matters, as did the *potestates* and *defensores, Ciuitatum* and *municipales magistratus*, whose cognisance exceeded not three hundred shillings. *Latissimè patet*, his office is exceeding spatious, it is interposed sometime in place of principall actions, as in case where *auxilium ordinarium, i.* relieue by way of ordinarie action is wãting, but where ordinarie means may be had, there is no recourse to his extraordinarie assistance, and this either at, or without the instance of any party, *aut eis inuitis*, sometime it is interposed *incidenter*, incidently: it reiecteth sometime the action, sometime it detracteth from it, *quandoque deseruit ei, i.* It serueth other whiles the action, or subiecteth it selfe vnto it: this we cannot prosecute here particularlie. It is generallie his office two-fold, that is to say, *Noble*, or *mere* and *mercenarie*, they differ thus, (these offices) *viz.* His noble office is that, *Quod per se subsistit nulli actioni vel exceptioni deseruiens vel adhærens, sed sui solius nobilitate gaudens*, his Mercenarie that, *Quod adhærit actioni, vel exceptioni, impotens stare per seipsum, vnde famulando) deseruit alij, sicut faciunt mercenarij*, that is to say, It subsisteth his noble office of it selfe, relying neither to action nor exception, but vp-

vpholden onely by the exellencie of it ſelfe, the mercenarie that, that ſerueth or ſubiecteth it ſelfe to the action, not able to ſtand of it ſelf, but dependeth, (as mercenaries or hirelings do) ſo termed, *Quia nomina eſſe debent conſequentia rebus*, *i.* Names muſt be appliable to their things.

Touching their iuriſdiction,[d] the worde comprehendeth generally *merum & mixtum imperium*: theſe be included in the offices we haue mentioned heere. It comprehende.n alſo, *modicam cohertionem*, or, *ſimplicem iuriſdictionem*, as much to ſay as that *quæ commiſſa intelligitur, eo ipſo, quod cauſæ alicuius commiſsio demandatur*:[e] ſuch is the cogniſance of the trial of Baſtardy: that is to ſay, Committed to the Ordinarie from the Prince.

Hence his iuriſdiction in this triall is not *ordinaria* (as I ſaid before) but *delagata*: Neuertheleſſe wee repute him generally, namely the B. a perpetuall and naturall Ordinarie.[f].

Here we will leaue the Ordinarie and his generall office, and returne to the point, *viz.* His office in the triall of Baſtardie, and his order in proceeding there: but let no man vnderſtand (by order) the order iudiciarie, ſubſtantiall proces or regular ſolemnities required by the lawe: all which be diſcourſed in their places in the Ordinarie, according to that part of pollicie, and maner of gouernment of this land, & without which, a ſentence or iudgment hath no validitie: for that were nothing els in ſummarie cauſes, ſuch as this cognition is, but to peruert order: wee might ſpeake of heere plenarie, and ſummarie cauſes, their natures, cogniſance, and difference; but becauſe the

[d] Pet. de ſerr. in form. lib. in act. confeſ. pro ſeruit. ver. Plenam & omnimodam. ll. ad hæc vtitur & auctoritatibus maximis, & plurimis.

[e] Sp. c. de iuriſdict. om. Iudicũ. d. c. expedito. modica vero coertio.

[f] Prouinc ang. in glo. Lindw. ver. ord.

argument will not endure heerein their diſcourſe at large, we will alſo amongſt the reſt leaue them to the tractat of the Ordinarie.

Officium vero ordinarij : briefly the Ordinaries office is this, *viz. Conuocatis conuocandis, &c.* that is to ſay, The parties ſummoned that bee required to be called before him in this triall, in their preſence then and either of thē (if they appeare) that he proceed to a diligent and ſummarie inquiſition according to the tenor of his writ, [g] the order and ſcope whereof the law comprehendeth in theſe wordes, *viz. Summariè & de plano ſine ſtrepitu & figura iudicij* : that is to ſay, Summarily, plainly, *ſine ſtrepitu, i.* Without noiſe of aduocates, ſuch as was the finiſhing of *Salomons* Temple: wherein was neither hewing nor hammering heard. [h] *Figura* importeth as much in iudgement, as a perfect ſimilitude or likeneſſe doth in any thing els, *i.* The verie apparant forme, picture, and face as it were of iudgement it ſelfe, framed of that ſubſtantiall iudiciarie order, and proces that wee haue mentioned.

[g] Bracton.

[h] Reg. 3. 6.

Hereof, *viz.* Of ſuch ſummarie cauſes, the plenarie cognition was reputed in the end a waſtfull prorogation, and grewe to be in proces of time both hurtfull, and hatefull. Such be the cauſes of Benefices, Tythes, Matrimonies, and Vſuries: from whence ſprang the conſtitution, [i] in the canons *Diſpendioſam*, in manner and forme ordained as followeth, *viz. Diſpendioſam prorogationem litium quam interdum ex ſubtili ordinis iudiciarij obſeruatione cauſarum docet experientia prouenire reſtringere in ſubſcriptis caſibus cupientes: ſtatuimus vt in cauſis ſuper electionibus: poſtula-*

[i] Diſpendioſam.

poſtulationibus, vel proniſionibus, aut ſuper dignitatibus, perſonatibus, officijs, canonicatibus, vel prebendis, ſeu quibuſuis beneficijs eccleſiaſticis, aut ſuper decimis ad quarum etiam preſtationem poſſunt qui tenentur ad eas premoniti cenſura eccleſiaſtica coerceri: nec non ſuper matrimonijs vel vſuris & eas quoquo modo tangentibus ventilandis, procedi valeat (de cetero) ſimpliciter, & de plano, ac ſine ſtrepitu iudicij & figura: volentes non ſolum ad futura negotia, ſed ad preſentia & adhuc etiam per appellationem pendentia, hoc extendi.

I muſt not omit the queſtion and doubt that aroſe in thoſe times, touching theſe wordes, *ſummarie, de plano ſine ſtrepitu & figura iudicij*: The queſtion and doubt was great, the Decretall therefore intituled *Sepe contingit*, enſued heereupon, to manifeſt and explane the conſtitution, the queſtion, and doubtes. *Sed adhuc per ipſum decretalem* (writeth a learned doctor of the lawe) *non fuit plenè conſultum ſeu ſuccurſum auribus cauſidicorum*: Neither (ſaith he) is that any maruaile; and his reaſon is, *Quia ipſorum natura ad lites querendas eſt inclinata: & ſemper cogitant lites ex litibus ſuſcitare.*

The regular ſolemnities were abrogated in ſuch ſummarie cauſes, and reſerued, ſo farre forth, as they bee mentioned to be in that decretall abrogated and reſerued, and not otherwiſe. The Iudge is therefore freed from (in theſe cognitions) the obſeruation of iudiciall order and forme required in other cauſes in the bodie of the lawes, *Canonici* and *Municipalis*. Neuertheleſſe hee continueth, as alſo the decretall forbiddeth not, that obſerua-

tion in iudgement in theſe cauſes ſtill that nature and naturall reaſon ordained, citation [k] (for example) is one: obſerued after the canoniſtes in *Adam*, whom vppon his tranſgreſſion God called before him in the Garden, [l] *Adam, Vbi es?* Where art thou *Adam?* &c. Another, though no regular libell, yet a petition or kinde of narration is naturall (at the leaſt) *Oretenùs*: This was obſerued in the queſtion of the women before *Salomon*: *viz. Filius meus viuit, & filius iſtius mortuus eſt*: [m] As alſo in the woman before Ieſus, *Mulier, vbi eſt qui te accuſat? &c.* Hir accuſation was heere required. The exception alſo is naturall (ſo termed) *Rei iudicatæ*, and the reaſon is, *Ne ſepius iudicetur in id ipſum*: But other exceptions, ſuch as rather tend to fruſtrate or delay the proceſſe, than informe the Iudge, bee repulſed, as oppoſite (more) than agreeable to nature. The Sacrament or oath, ſo termed *Iuramentum calumniæ*, Howbeit deriued from the ciuill lawe, yet it ſauoureth ſo of naturall equitie, that it is retained amongeſt the reſt; for this doth bridle the malice of contenders. The ſecret examination of witneſſes, and regard of their depoſitions, *viz.* Howe they accord, and conclude, is another, obſerued in the Elders (before *Daniel*) againſt *Suſanna*. [n] Theſe naturall obſeruations be familiar to our reuerend Ordinaries, and their learned Officials, in their places, and the regular ſolemnities in theirs; it were to be wiſhed they were as familiar to the reſidue, our rurals inferior and peculiar Iudges.

But with theſe we haue nothing to do in this trial: briefly our naturall ordinarie his *Proceſſus*, *i.* His order,

[k] c. Paſtoralis ext. de ſent. & re iudic.
[l] Gen. 3.
[m] c. Afferte. de preſumpt. Reg. 3. c.

der, is this, *viz.* he proceedeth without ſolempnitie eyther of Libel, or *Conteſtationis litis:* Ordinarie vacatiõs he reſpecteth not, ordeined for mans neceſſities, dilations he abridgeth, cutteth off fruſtratorie and friuolous exceptions and appeales, the multitude he repreſſeth of witneſſes, aduocates, and proctors, natural and iuſt defences onely he admitteth: vrgeth the oath *de calumpnia* and *veritate dicenda*; Citeth vnto ſentence, and determineth his finall decree in writing. This is the ſum of the Decretal, the ſubſtance of the text enſueth. *viz.* "*Sepe cõtingit quod cauſas committimus: & in earũ aliquibus ſimpliciter ac de plano ac ſine ſtrepitu & figura iudicij procedi mãdamus; de quorũ ſignificatione verborũ à multis contẽditur: & qualiter proceedi debeat dubitatur. Nos autem dubitationem huiuſmodi (quantum nobis eſt poſsibile) decidere cupientes, hac in perpetuum valitura conſtitutione ſancimus, vt iudex cui taliter cauſam cõmittimus, neceſsario libellum non exigat, litis cõteſtationem non poſtulet, in tempore etiam feriarum ob neceſsitates hominum indultarum a iure, procedere valeat, amputet dilationum materiam litem quanto poterit faciat breuiorem, exceptiones, appellationes dilatorias, & fruſtratorias repellendo: partium aduocatorum, & procuratorum contentiones & Iurgia, teſtiumque ſuperfluam multitudinem refrenando, non ſic tamen Iudex litem abbreuiet: quin probationes neceſſariæ & defenſiones legitimæ admittantur.*

° Sepe cõtingit.

Citationem vero, & præſtationem iuramenti de calumnia vel malitia, ſiuè de veritate dicenda, ne veritas occultetur per commiſsionem huiuſmodi intelligimus non excludi.

Verum quod iuxta petitionis formam pronunciatio ſequi debet

debet per partem agẽtis, et etiam rei (si quid petere voluerit) est in ipso litis exordio petitio facienda: siue scriptis, siue verbo, actis tamẽ continuo, vt super quibus positiones & articuli formari debeãt, possit haberi plenior certitudo, & vt fiat definitio clarior, inserenda.

Et quod positiones ad faciliorem expeditionem litium propter partium confessiones & articulos ad clariorem probationem vsus longeuus in causis admisit, nos vsum huiusmodi obseruari volentes, statuimus vt iudex sic deputatus a nobis (nisi aliud de partium voluntate procedat) ad dandum simul vtrosque terminum dare possit & ad exhibẽdum omnia acta & munimẽta quibus partes vti volunt in causa; post dationem articulorum diem certam quandocunque sibi videbitur valeat assignare: eo saluo, quod vbi remissionem fieri contingeret pro testibus producendis, possint etiam instrumenta produci, assignatione huiusmodi non obstante: interrogabit etiam partes siuè ad earum instantium siuè ex officio, vbicunque hoc equitas suadebit: sententiam vero definitiuam citat ad id, licet non peremtoriè partibus inscriptis & prout magis sibi placuerit stans, vel sedens, proferat: etiam (si ei videbitur) conclusione non facta, prout ex petitione & probatione & alijs actitatis in causa fuerit faciendũ. Quæ omnia etiã in illis casibus in quibus per aliam constitutionem nostrã vel alias procedi potest simpliciter, & de plano ac sine strepitu & figura iudicij volumus obseruari. Si tamẽ in præmissis casibus solemnis ordo iudiciarius in toto, vel in parte, non contradicentibus partibus obseruetur, non erit processus propter hoc irritus, nec etiam irritandus.

The incident question is now returned whence it came, and certified to the secular court: the ordinary *Functus est officio suo*, we leaue the natiuitie therefore discussed, by vertue of the kings transmission, to the censure

censure of the secular iudges, and descend continuing stil our stile (in natiuities) canonically to matrimony and legitimate issue.

CHAP. V.

Of matrimonie, and Legitimat issue.

Vr scope hath been hitherto tied to a limitted iurisdiction, *viz.* The secular Transmission from the king : we haue not therfore defined Bastardie, and so we deeme it needlesse stil, the legitimate issue may verilie suffice for this : that is to say (as contraries doe) the one to explane the other.

But legitimat issue, let no man vnderstand legitimate only, that is to say, such as be adopted children, for there is in such but a bare immitation of nature, neither haue we vse (in this land) of adoption nor arrogation, but naturall and legitimat, that is the legitimate issue we speake of here, *viz.* Naturall and Legitimate both : naturall, so termed, *Quia naturaliter generati*; legitimat, *ex Legitima parentum coniunctione approbata per leges*, that is to say, Natural, of their naturall begetting; legitimat, of their parentes lawfull coniunction, approued by the lawes : this is the issue of the body lawfully begotten, other issue hast thou none but Bastards.

What shal then become of the issue sprong from *Clande-*

Clandestine marriages? *Clandestine* marriages we call them *Quæ clam contrahuntur*, that is to say, That bee contracted so priuily that they cannot bee lawfullie proued by witnesles,[p] shall that be bastarded? I saie not so without exception, but I counsell thee trust it not, for I assure thee, (howsoeuer the matrimonie holdeth before God and the world) if the parties shall both of them acknowledge it, incurring onely a corporall pennance, and the clerke that shall celebrate the same, but 3. yeares suspention from his office, yet if the one confesse it not, or that which is more, renounce the marriage, and the other proue it not, (for in this case the partie is enioyned to proue that pleadeth the matrimonie)[q] verily proued, it holdeth, *Coram Deo & Ecclesia*, *i.* Before God and the congregation, otherwise, *Coram Deo, qui corda scrutatur, &c.* that is to say, Before God it shall stand; the searcher of the secreats of all hearts : but *Ecclesia non iudicat de occultis*, It is too secreat for the church to determine. Touching therefore this issue, to come to the determination of the church, *i.* The law of the church, Let vs wade but a little further, and suppose by the way but that that falleth out indeed often times: *viz.* Thou contractest thy selfe and marriest (priuely) with a woman, who afterwards contracteth and marrieth openly with another, whose wife shall shee be?

[p] C. 1. & C. Cũ inhibitio ext. de Cland. desp.

[q] d. c. 1. Cland. desp.

Touching the resurrection, our sauiour Christ answered such a question to the Saduces[r] but thus the law doth answere this. *viz.* eyther it may (the *Clandestine* marriage) be proued, and then it shall preiudise the publique ensuing contract, touching first the con-

[r] Mat. 22.

conſumation [r] of the publique, if it bee not conſumated: next, it ſhall preiudice it, if it be conſumate, touching the legitimation of children: but namely of ſuch as be borne of the publique matrimonie, *poſt receptionem eccleſiæ*, that is to ſay, After the Church hath receiued and publiſhed the *Clandeſtine*: [t] and not otherwiſe: For from the publication of the clandeſtine marriage, the publique ſhalbe iudged vnlawfull, but the iſſue not diſabled of the publique that is ſprung before, [u] though the marriage be diſoluced afterwardes: ſo this danger thou contracteſt withall, whoſoeuer, that weddeſt thy wife in the darke: And more than that, if haply hee beget hir with childe (as ſuch miſchances fall, whether before or after publication of thy marriage) ſo it be borne in matrimonie, be aduiſed whether the law (in fauour of legitimation) groundeth not more vpon thy poſſible exceſſe, than the actual cohabitation of the other: preſuming him an adulterer [x]; cõſequẽtly if thou verifieſt not the prouerbe, my cow, my calfe: the bull is not regarded.

For touching the cohabitation of thy wife with an adulterer, whatſoeuer may be ſaide in the canon and ciuill lawes, conſider (for more ſuretie) after the lawes of this land, whether thou art within or without the foure ſeas, at ſuch time as the child be conceiued. [y]

A ſecond danger thou hazardeſt in *Clandeſtine* marriages, whether greater, leſſe, or equall with the other, I will not ſtand to prooue, but meaſure it, and take it as it is, *viz.* Thou taſteſt haply the forbidden fruit: Looke more for this in the figures and declaration of conſanguinitie and affinitie in the 6 and 7

[r] c. Quod nobis in fin. de Cland. deſp. & c. quod nobis. qui fil. ſunt legitimi.

[t] c. 2. Qui filſunt legit.

[u] d. c. 2. Eod. tit.

[x] Bald. in L. ſi à matre. Eod. de ſuis & legit. Ab. in c. accedens. de purg. Can. ext.

[y] Bracton. De leg. & conſ. ang. lib. 1. c. 9. in fin. Brook. tit. Baſtardy. n. 4.

chapters enſuing, there is pictured for thee the tree & the fruit: Well, thou taſteſt the forbidden fruit with good intent: for ſo the law intēdeth thou hadſt *bonam fidem*, if thou knewſt it not: *i.* Thou tookeſt her not to be of kinne, or at the leaſt ſo neere of kinne vnto thee: thy iſſue ſhalbe baſtarded (here) by reaſon of thy *Clandeſtine* marriage: *Nec de parentum ignorantia, vllum eſt habitura ſubſidium, i.* Excluded quite from the benefite of their parents ſimple ignorance: of whom the lawe preſumeth (in caſe of *Clandeſtinitie*) that they were not (thy parents) vnwitting of their impediment, or affectors rather of that ignorance: howbeit otherwiſe, that is to ſay, contracted in the face of the Church, their ignorance had relieued them.[z]

Neuertheleſſe vnderſtand this in iſſue that is had *ante latam ſententiam diuortij, i.* Before the ſentence giuen of diuorce: for ſo conceiue withall, they muſt be diuorced howſoeuer.[a]

Touching legitimation, it is otherwiſe in theſe prohibited marriages, howbeit openly and ſolemnly had in the face of the Church where the parents be priuie to their impediments.[b]

The like of him or her that marrieth a ſecond husband or wife, liuing the firſt:[c] in which caſe alſo as in the other before, Solemnitie, Clandeſtinitie, Priuitie, and Ignorance, haue their effects accordingly.

Here we may remember (and not without cauſe) the diuorced husband and wife: but why do I terme them diuorced, if man & wife? or why man and wife, if diuorced? doe they not marrie againe with others (liuing the diuorced)? they do, but they doe not wel therein; the poſitiue lawes of the Church be againſt it:

[z] d.c. Cum inhibitio ¶. Si quis. ext. eod. tit.

[a] Si tamen infideles, qui ſecundū veteris, vel propriæ legis inſtituta, circa gradus cōſanguinitatis, vel affinitatis a canonibus notatos, coniūcti ſunt, domino inſpirante, conuerſi fuerint, matrimoniū antea contractum non erit poſt baptiſmi lauacrum irritandum: cum per ſacramentum baptiſmi, non ſoluantur coniugia, ſed crimina dimittantur. Vnde & proles inde nata legitima cenſibitur. c. de infidelibus. ext. de cōſang. & affi. Hæc inſtit. iuris can. lib. 2. tit 13. ſi tamen. Lancelot.

[b] d c. Cū inhibitio. eod. tit.

[c] Bracton.

it: and therfore I terme them the diuorced husband and wife, that is to ſay, diuorced onely *a cohabitationè*, *i.* From mutuall dwelling and cohabitation togither, and not (as ſome would haue it) *a vinculo*, from the band of marriage, which is indiſſoluble.

They may read in that Epiſtle to the Corinthians thus: Vnto the married I command, not I, but the Lord; Let not the wife depart from hir husband: but and if ſhe depart, let hir remaine vnmarried, or be reconciled to her husband: and let not the husband put away his wife. And againe, Art thou bound vnto a wife? ſeeke not to be looſed: they anſwere, Except it be for whoredome: they ſay well; hereby they put her away: but doe they marrie (during hir life) with another, by the ſame exception? When Ieſus had ſhewed himſelfe to his diſciples at the ſea of Tiberias, which was the third time he appeared vnto them after he was riſen from the dead, hee communed there with *Simon Peter*, when they had dined, and ſignified in the end vnto him by what death he ſhould glorifie God. Lord (ſaid *Peter*) what ſhall this man do? meaning that diſciple whō Ieſus loued ſo, & that leaned on his breſt at ſupper. What is that to thee (ſaid our ſauiour) if I will that he tarrie till I come? follow thou me. Then went this word abroad amongſt the brethren, that this diſciple ſhould not die: yet our Lord ſayd not, hee ſhall not die, but if I will that hee tarrie till I come, what is that to thee? So, this is gone abroad, He may marry another: yet the Lord hath not ſaid, He may marrie another; no more than (when he ſpake, Thou ſhalt not take a wife with hir ſiſter during hir life) he ſaid, Thou mayſt marrie with

1. Cor. cap. 7

Cap. eod.

hir ſiſter, thy wife being dead: *Baſilius* therefore anſwered vnto this, *Epiſt. ad Diodorum, Non temerè ex eo quod ſcriptum eſt, colligendum eſſe quod ſcriptum non eſt:* that is to ſay, That that is not written, muſt not be vnaduiſedly gathered from that that is written: no nor yet that thou ſhalt put away thy wife for whoredome art thou commmanded to it, nor commended for it: neuertheleſſe (for that) thou art permitted. Wilt thou be aſſured in this caſe, & walk where thou needeſt not wauer, but ground thy ſelfe on faith indeed, and ſo to be free from ſinne? Abſteine, or els be reconciled: in no wiſe contract a new with anie other vpon diuorce, & ſeperation made by the Iudge for a time, the lawes yet ſtanding to the contrarie. Beſides diuerſe learned and moſt reuerend Fathers and Councels of the Church be againſt thee.

Auguſt. in coment. ſuo ad 1. Cor. cap. 7. & in Hom. 49. de adulterinis coniugijs. quæ ſententia allegatur in cap. Quemadmodum 32. Q. 7. Idem tenet Hieron. ad damaſ. præsbit. vtin cap. omnes. D. 32. Q. 7. vid. Q. per totum, & confi. ibid. ad idē allegat.

But, *Hinc illæ lachrimæ*: Theſe contracts wee haue mentioned, affoord them the greateſt fauour the law preſumeth for them: the Scandal remaineth yet a blot (in perpetuitie) notwithſtanding: for, *Poſt ſecutam copulam & ſuſceptam prolem detectis quibuſdam impedimentis, non ſine graui ſcandalo contracta matrimonia retractari oporteat.* Marriages (that is to ſay) confumat with bodily knowledge and children, detected afterwardes of certaine impediments, without great offence, cannot be diſſolued.[a]

[a] Glo. in ſum. 30. Q. 5. & can. Si quis diuinis. 55. His itaque. diſt. 30 Q. 5.

A ſecond offence ariſeth exceeding this in a higher degree ſo termed, *Reatus adulterij*: as much to ſay, as the breach of the 6 commandement: and thus it falleth out, *viz. Si alter coniugū qui clam contraxerit coniugiū negauerit (legitimis probationibus deficiētibus) iudicis ſentētia ritè fuerit abſolutus; vterq; alijs nubendo, incurrit reatum adulterij,*

dulterÿ, i. If one of theſe priuie contractors ſhall denie the matrimonie, and conſequentlie (for want of proofe) be freed from the other by ſentence of the iudge, they incurre eyther of them, by marrying vnto others, the daunger of adulterie.[c]

[c] De clandeſt. desp. luſt. iuris Canon Lancelot.

Hence it was prouided, *Conſultiſſimè* by the law, [f] *vt nullus fidelium occultè nuptias contrahat. i.* That Chriſtians ſhould not ſo priuely make their marriages, but that the miniſter of the Church ſhould againſt the cõſumation of the ſame, proclaime or publiſh (as we terme them) the bans to this effect, that if any man or woman could alleadge any lawfull impediment why ſuch and ſuch, &c. ſhould not be ioyned in lawfull matrimonie, they ſhould then alleadge it, &c. at the firſt, ſecond, third, or laſt publication, &c. the miniſter is alſo inioyned, *vt ipſe inueſtiget vtrum aliquod futuro matrimonio obſiſtat impedimentum*, as much to ſearch, as in him may lie, if any obſtacle (or not) may repulſe the matrimonie approching.[g]

[f] C. 2. 30. Q. 5.

This law is more precilely obſerued in other countries than in many partes of ours, eſpecially our exempted iurisdictiõs, for there it wil not ſerue, I mean where this obſeruation is, to dwell a yeare or two in a place (hauing been a ſtranger els all the daies of his life) to make him of that pariſh onely where he dwels in reſpect of matrimonie, if he contracteth there: but ſhalbe ſent to ſeeke the places whence he came, and letters teſtimonial frõ thence, namely from the miniſters of thoſe remote & far diſtant places, to teſtify of him, (touching mariage there) whether he be bound or free; *Abbas* reporteth this obſeruation in his time, the which *Panormitã* relating, two learned doctors, of

[g] D. c. cum inhibitio in princip. ext. eod. tit.

great authoritie of opinion is cleare touching the minde of the letter of the law, that ſo it ought to bee in ſuch caſes: and for mine owne parte, (*Saluo ſemper meliori iudicio*) if the law be not ſuch with vs, it ſhal lie open to a manifeſt fraud, for what is that to Barwicke where I was borne, and liued thirty yeares together, the bannes ſhould be publiſhed two yeares after at Iſlington or S. *Iohns* pariſh, by London, where I dwelt and am dwelling, in the one and in the other, but two bare yeares, happily two monethes, yea why ſhould not two daies ſerue my turne? I flye from Barwicke, & am entertained at Iſlingtō, wher I reſt a winters night, and hauing contracted my ſelfe with my Miſtris, or hir maide, for ſome cauſes beſt knowne to our ſelues, I take my leaue honeſtly in the morning, & am entertained again freſh & faſting in S. *Iohns* pariſh, there I pray (the morrow after) publicatiō in the pariſh church of matrimonie, betwixt me and I know not whom, for my accquaintance was but ſmal, yet I can name my ſelfe, my miſtris (you muſt ſuppoſe her a wyddowe) or her mayde, or if my memorie fayles me, I haue their names in writing; Iſlington is a common name known farre and neere, there dwels mine old miſtres and my fellow, & there dwelt I for a long winters night togither: as for S. *Iohns* pariſh, I ſhal not need to charge my memorie with it, it is ſufficient I tender the bannes there, and ſay whoſe man I am; we ſhalbe thus denounced, my new wife and I together, at theſe two pariſhes, and my poore old wife at Barwicke, ſhalbe neuer the wiſer.

This (ſaith *Panormitan*) he hath ſeen, *De facto*, in his time, and ſurely iniquitie is riper in ours, yea rotten ripe,

ripe, it is but needlesse to faine an example, for let him say that hath not seene, or crediblie heard of, (in this age of ours) as great experience as this: and whence cōmeth it? verily, after *Clandestine* marriages alwaies premised first, next from the inconsiderat examining the condition and state of the person, and certifying with the like discretion, and receiuing their certificates together, whose bannes and mariage they publish and solemnise.

This I could counsel them whom it concerneth in that behalf, to looke vnto, for two causes; the one, the open scandal that may ensue such marriages & contracts; the iminent danger the other, of the Canon; that pointeth at the world, this at themselues: the law hath *Duplicem mentē*, not a double meaning, such as is their excercise that fold them as they list, but the same vnderstanding in both, the onely difference is, the one is nearer, the other further off, *viz.* *Extensiuā*, and *comprehensiuam*, of these in the tractat of the ordinarie. In the meane time (touching the mind I haue deliuered here of the canon in *Clandestine* marriages) such as be disposed, and whom it concerneth besides, let them learne if they please, and sure it is worth the knowledge, whether it comprehendeth, or we haue extended vnto it.

And touching *Clandestine* marriages generallie, such be moreouer sayd to be so, in which be omitted *Solemnitates quas ecclesia de honestate requirit.*[1] that is to say, Such decent solemnities as the church hath ordeined, as *Publicū proclama*, *traductio in ecclesiā*, *benedictio sacerdotis*, *annulus*, *&c.* Neuertheles they shall not, the defect of these, frustrate the marriages had, if no other

[1]. D. c. cum inhibitio. eod. tit.

other impedimẽt ensue, only it hindreth the cõsumatiõ of the contract not had, and as we haue sayd, they agrauate the paine, they be not otherwise reputed for substance, but decẽcy, according to the text, *Omnia decenter & secundũ ordinem fiant &c.* Neuertheless concurring with lawfull impediments and detected (as in other cases of *Clandestinitie*) they disable also the issue.

[l] Glo. in d. c. cum inhibitio ver. Clandestina. eod. tit.

Hostiensis, of no lesse authoritie thã learning, cõcludeth generally that euery matrimony had against the churches prohibition general, or special, expressed, or not expressed, shalbe deemed *Clandestine* & subiect to the Canon.[m]

[m] Host. super c. cum inhibitio Pau. eod.

Here I might speake of the prohibited times to marrie, that is to say from the first sunday in aduent, to the octaues of the Epiphanie inclusiuely, the first prohibition. The second from the Lxx. sunday, to the octaues of Easter inclusiuely. The third, from the first Rogatiõ day, till the seuenth of Pentecost, that is to say, till Trinitie sunday: vpon which day it is lawfull to solemnize[n].

[n] De ferijs c. capellan. ext. Iind. de dec. & oblat. ver. nubentium.

This hath beene, and is the obseruation of the Church at this day, namely to suspend in these times not the beginning, nor ratification of matrimonie,[o] but the accessorie solemnities onely, and the consumation of the contract; neither can I finde it so strict, this temporall prohibition, as it is (for the most part) interpreted to be, for thus I find it qualified, *viz. Hæc autem seruanda sunt, si vxor consensum adhibere voluerit*, the glosse addeth *& contra*: that is to say, This abstinence taketh place, if the wife shall consent thereunto: and likewise if the husband, for they haue not power

[o] Patrimonium initur per sponsionem, ratificatur per consensum, cõsumatur per copulam.

power of their bodies in themſelues, but either ouer other in due beneuolence: this the canons terme *Debitum coniugale*, wherin they be prohibited to defraud one another, except it be by conſent for a time [q]; no reaſon then the Church ſhould defraud them both. Let me not offend, in ſhewing the ſignifications I haue read of theſe prohibited times to marrie, leauing the ſame vnto them, that beſt be able to iudge them.

[q] 1. Cor. 7. 3. 4. 5.

The time of Aduent, repreſented *Tempus abſentiæ ſponſi, i.* The abſence of the bridegrome, in the which his ſpouſe moſt of all deſireth, *Aduentum, i.* The comming of hir husband, and which ſhee importuneth daily. This ſhe inquireth of paſſengers too and fro, abandoning all delightes, ſo ſaith a father, *Sponſa eccleſia tempore aduentus querit in lectione prophetarum quos tunc legit & qui de hoc certam habuerunt reuelationē: Ideo in memoriam ſponſi abſentis, ſed deſiderati, eccleſia tunc temporis ordinat filios ſuos a nuptijs abſtinere.* The ſpouſe (ſaith hee) the Church, euen ſeeketh ſo this time, the comming of her bridegrome in the Prophets, which then ſhe readeth and who haue had thereof certaine reuelation; and therefore ſhee hath this time of Aduent in remembrance of hir abſent, but moſt deſired bridegrome, ordained that her ſonnes ſhould abſtain from marriage [r].

[r] Itinerar. Paradiſ. de mar. ſer. 2.

The ſecond prohibition repreſented *Tempus luctus in quo lugemus caſum Adæ: & caſum noſtrum in ipſo.* The ſecond prohibition, that is to ſay, the time of lent, it repreſented a time of mourning; wherein we bewailed the fall of *Adam*, and (in him) our owne: and the dangers conſequētly herein we haue fallen into. We

ſhould not therefore in theſe dangers reioyce, but lament rather and pray: it hath not therefore in this time, the Church, wherin ſhe bewailed hir ſinnes, in dread of ſuch imminent dangers, giuen libertie to hir children to marrie.

Here they haue inferred, that *Noah* whileſt he was in the Arke, knew not his wife, nor his ſonnes theirs; but liued there apart, yea and all other creatures beſides, both male and female: for hauing continued in the arke, by the ſpace of a yeare, they are not read any of thē to haue multiplied. Againe the ſcripture [f] ſpeaking of the entrance of *Noah* into the Arke mentioneth it thus; *Noah* entred, and his ſonnes: and afterwardes (as though they went apart) and his wife, and his ſons wiues: but otherwiſe of his going forth, *viz. Go forth of the Arke, thou and thy wife, and thy ſons & thy ſons wiues with thee*: [g] So that the words which were in their entrāce vſed apart; were vſed togither in their going forth. Hence *Hierome* writeth vpon *Zacharie*, *Temporibus tribulationis & luctus non debere ſapientem inſeruire operibus nuptiarum*, that is to ſay, That they ought not, the actes of marriage, to be yeelded to (of him that his wiſe) in the times of tribulation and mourning.

[f] Gen. 7. 7.

[g] Gen. 8. 16.

Plangent terræ, &c. And the Prophet [h] writeth thus of the ſiege of *Iudah* againſt Hieruſalē. In that day ſhall there be a great mourning in Hieruſalem, &c. And the land ſhall bewaile, euerie familie apart: the familie of the houſe of *Dauid* apart, and their wiues apart; the familie of the houſe of *Nathan* apart, and their wiues apart; the familie of the houſe of *Leui* apart, and their wiues apart; the familie of *Shimei* apart, and

[h] Zecharian. 12

and their wiues apart: all the families that remaine, euerie familie apart, and their wiues apart.

The third prohibited time, including the Aſcention and Penticoſt, (hereunto were added the 8 daies after *Eaſter*) repreſented *Tempus glorificationis*, wherin (ſaith the Lord) [x] we ſhalbe *Sicut angeli Dei, i.* Equall with the angels of God, which neither marry, nor are married. Briefly, the firſt prohibited time mentioned here, repreſented the time of reconciliation: the ſecond of tribulation: the third of glorification.

[x] Luke 20.36.

This for the prohibitiõs (I haue read) of the times; but where we haue mentioned *De legitima parentum coniunctione approbata per leges*, in the beginning of this chapter, that is to ſay; Of the lawful coniunction of man and woman approoued by the laws: it reſteth of the prohibition of the perſons: for ſo wee ſhall iudge of lawfull coniunctions, and ſo of lawfull iſſue. And touching theſe perſons ſithens they be in neareneſſe in thẽſelues, diſcerned by conſanquinity, and affinitie; & conſequently whether prohibited (there) to marrie or not, we haue next declared conſanguinitie and affinitie in their orders, to manifeſt the prohibitions the better.

CHAP. VI.

Of conſanguinitie or bloud: the figure and declaration thereof.

CONſanguinitie is a bond or linke of perſons deſcended of the ſame ſtocke, detiued from carnall propagation: ſo called, *Conſanguinitas, quaſi ſanguinis vnitas*:

That is to ſay, Conſanguinitie of the vnitie or communitie of bloud. [y] And this, whether it be lawfully contracted or otherwiſe: that is to ſay, Carnall knowledge and iſſue had in fornication, equally contracteth conſanguinitie with matrimoniall knowledge, touching the prohibition of marriage.*

[y] Io. And. in decla. arb. conſang.

De prob. per tuas. 28. H. 8. c. 7 ſtatute.

Now to diſcerne prioritie or neerenesſe in bloud, two things muſt be regarded principally, ſo called, *Linea*, and *Gradus*: as much to ſay as the line and degree: whoſe vſes the figure here enſuing ſhall declare at large, *viz.* to be the one of them, namely the line that, that gathereth togither the perſons, conteining their degrees, and diſtinguiſhing them in their numbers, this is called *Collectio perſonarum*: the other the ſtate or condition of the diſtant perſons, ſhewing them how neere they be, or how farre aſunder (in themſelues) from their common ſtocke, or either from other: This is called *Habitudo diſtantium perſonarum: & dicitur gradus ad ſimilitudinem ſcalarum graduum, ſiue locorum precliuium, quia ita gradimur de proximo ad proximum.* [z]

[z] L. Iuriſconſultus. ff. de arb. aff.

It is alſo to be noted, this line to be threefold; that is to ſay, Aſcending, Deſcending, and Collateral. [a]

[a] L. 1. aff. de grad. aff. c. 1. 26. Q. 5.

The aſcending line is from me to my father, to my grand-father, great graund-father, and ſo vpwardes: in this figure from ✠ to A. B. C. D. Contrariwiſe, the deſcending line from me to my ſonne, nephew, his ſonne, downwards: in this figure, likewiſe from ✠ to a. b. c. d.

The collateral line is placed on either ſide: this is alſo noted to be twofold, *viz.* Equall & vnequall. The equal collateral is that, where equally they differ, the perſons,

perſons, from their common ſtocke: as brothers and ſiſters be equally diſtant from their father, as alſo be brothers & ſiſters children from their graundfather.

The vnequall, where one precedeth or goeth before or after another, ſuch be brothers, and their brothers or ſiſters children, and others apparant in this preſent figure, as alſo in the Legal figure before, eaſely diſcerned by their equal or vnequal diſtance, by relation from thẽſelues to their cõmon ſtocks. Common ſtocks vnderſtand ſuch as be placed in this figure frõ ✠ vpwardes in the aſcending line, A. B. C. D. there is proceeding from theſe, on eyther ſide, a generation manifeſt in this figure; ſuch be Collaterals, equall or vnequall, diſtinguiſhed by their places: for example, Let vs make A the firſt ſtocke in the aſcending line, for ſo it falleth out by order and courſe of nature, ✠ is deſcended from him, who pointeth at his equall collaterals b 1. b 1. on either ſide: behold then the diſcent from b 1. is c 1. from thence d 1, from thence e 1; now b 1 is in the firſt degree to ✠, c 1 in the ſecond, d 1 in the third, e 1 in the fourth; theſe be all from the ſtocke A. *viz.* b 1, c 1, d 1, e 1, collaterals vnto ✠, *i.* one equall on either ſide, at whome hee pointeth equilaterally, namely b 1; the other three vnequall, eache further diſtant from him than other: for ſo they exceed (firſt) the equall collateral line of ✠, and next they exceed themſelues in deſcending as they goe.

The ſecond ſtock is B, A is deſcended from him in this figure, and c 2. on eyther ſide: from c 2. is deſcended d 2, from d 2 e 2, from e 2 f 2. B is here in the ſecond degree aſcending vnto ✠, and b in the ſecond degree deſcending vnto him, vnto whom vp-

wards and downwards he pointeth directly, he pointeth alſo at d 2. and d 2. collaterally, theſe be all from the ſtocke B. *viz.* c 2. c 2. d 2. d 2. e 2. e 2. f 2. f 2. collaterals vnto ✠ as the other were in the ſtock before, that is to ſay d 2. and d 2. equals, c 2. and c 2. extend not to his line, and e 2. e 2. f 2. f 2. exceed it. Here is likewiſe one equal collateral vnto ✠ on either ſide, & three vnequals, exceeding (as the other did) themſelues, in their deſcending as they goe.

And they be thus in degree vnto ✠ *viz.* c 2. and c 2. in the ſecond degree, d 2. and d 2. in the ſame ſecond degree, e 2. and e 2. in the third, f 2. and f 2. in the fourth, not encreaſing in the collaterals from the ſtocke til they exceed the equall collaterall line of ✠, ſuch be from the firſt ſtocke c 1. d 1. e 1. which encreaſe in euery perſon, from the equal line vnto ✠ one degree.

Such be alſo from the ſecond ſtocke e 2. f 2. from the third ſtocke g 3. The fourth generation determineth in this figure at the collateral equal line, *viz.* h 4: from the fourth and laſt ſtocke in the fourth degree vnto ✠. This is after the Canons, and not the ſecular lawes, whoſe reaſon and difference we haue handled in the ſecond chapter before, neuertheleſſe it ſhall not be ſuperfluous to deliuer (as they tearme them) ſuch Magiſtral rules as the autenticall maiſters, fathers and doctors of the law haue determined in theſe lines to diſtinguiſh as well the degrees, as to ſhew the difference we haue mentioned betweene the lawes and the Canons, the firſt wherof is this, *viz.*

The firſt rule. In the right or ſtraight aſcending and deſcending lines, how many perſons there be (computation had of

of themſelues & the perſons that be placed betwixt them) whoſe diſtance is demaunded, ſubſtracting but one, there be ſo many degrees. For example, if thou wilt know how many degrees D. differeth in this figure from ✠, thou ſhalt find (with themſelues and thoſe together betwixt them) fiue perſons, conclude there be foure degrees, and that they differ conſequentlie, ✠ and D, either from other, in the fourth degree. Vna dempta.

The ſame concluſion is of ✠ and his deſcending d. for there be numbred likewiſe fiue perſons, and ſo concluded foure degrees.

If thou wouldſt know how they differ, D. from d, thou ſhalt finde there be numbred nine perſons, conclude eight degrees, & that they differ conſequentlie D. and d. either from other in the eight degree: the rule holdeth in this line in the reſidue, all one here after the laws and Canons, onely their difference is in the Collaterals, whoſe Magiſtral rules be theſe, *viz.* Collaterals in the equall line, how many perſons there be from either of them to their common ſtock, ſo far they differ either frō other; from ✠ (for example) to D. there be foure perſons, from h 4. likewiſe to the ſame ſtocke D, be foure perſons, ✠ and h 4. ſhall differ therfore, and be diſtant from themſelues in the fourth degree. This is after the Canons. The ſecond rule.

After the laws it is otherwiſe, *viz.* collaterals in the equal line, how far they differ either of thē from their ſtock in number of perſons, in that number doubled they be diſtant from thēſelues; this is apparant in the Legal figure, in the 2. Chap. before, for example, ✠ in that Legal figure differeth as it doth here in the ſame

num-

ber of persons from D and from h 4 to the same D there, there be numbred likewise foure persons; either of these numbers doubled from the persons to their common stocke, that is to say, either from ✠ to D, or h 4 to the same D, in that Legal figure maketh the number of eight: so many degrees shall the persons be a sunder, and this diuersitie ariseth as we haue touched in the 2. Chap. before, in that euery person addeth a degree in the collaterals, after the laws: as two brothers make two Legal degrees, which after the Canons do make but one. Their computations be diuers, as also their causes be diuers, whose reasons and difference we referre to the said 2. chapter before, only this differēce we may note in this place, because it is not mentioned there, *viz.* In the equal collaterall line, whether the line consisteth of euen or odde numbers, the degree falleth alwaies out (in number) to be euen, after the lawes: this may be seen in the Legal figure in the 2. and 4. and 1. and 3. stocks there, for 2. make 4. and 4. make 8. in the equal collateral line, as also do 1 make 2, & 3, 6, in the same collateral line: this appeareth in this Canonicall figure otherwise, for 1 maketh one, 3 three, 5. fiue, &c.

The third rule.

The rule remaineth now to be spokē of, touching collaterals in the vnequall line, which after the Canons is this, *viz.* Collaterals in the vnequal line, how far they differ (the furdest of thē) from their stocke, so farre they be either of them distant from themselues: for example, D is the stocke to ✠ and f 4 in this figure, to know their distance in bloud, we must make our computation from the furthest: this appeareth in the figure to be ✠, which differeth in the fourth

degree

degree from D, ſo many degrees therefore ſhall hee differ from f 4 and conſequently ✠ and f 4 either from other. The ſame in the other deſcending collaterals vnto ✠, *Vſquè ad lineam æqualitatis:* that is to ſay, The ſame computation that is had from ✠ to the ſaid common ſtocke, the ſame computation ſhall hold betweene ✠ and euery deſcending perſon from the ſame ſtocke collaterall vnto ✠, euen to his equall collaterall line: for they increaſe not (as we haue ſaid before) one degree vnto ✠, till they ſhal haue exceeded his equall collaterall line.

This (if wee proſecute our example in the ſame ſtocke, D) ſhalbe manifeſt: for ✠ differing from this ſtocke in the fourth degree, differeth therefore from e 4 in the fourth degree, from f 4 in the fourth, from g 4 in the fourth: and from h 4 in the fourth. Hence it is holden an infallible rule in the canons, that a perſon begotten, begetteth not a degree, till the equall line be exceeded: and then (and not before) they increaſe in euery added perſon.

It is otherwiſe after the legall computation, for after the lawes it is thus: *viz* collaterals in the vnequal line, how many perſons there be, (ſubſtracting the ſtocke) ſo many degrees. This appeareth in the ſame ſtocke and perſons that wee ſuppoſed in the canonicall computation before: for ✠ differeth heere (as there) from D in the fourth degree: but e 4 (heere) in the fift, f 4 in the ſixt, g 4 in the ſeuenth, and h 4 in the eight, and ſo euery perſon without exception (after the lawes) doth increaſe a degree. I referre thee for example to the legal figure.

It ſhalbe needleſſe to proſecute euery particular

This figure is placed at the end of the next chapter here enſuing: together with the figure of affinitie there. Secundum, Ioh. An.

ſtocke in this figure at large, for the ſame reaſon holdeth of thoſe we haue touched, and the reſidue: We leaue them therefore (with this relation) to the figure inſuing here of Conſanguinitie, deſcending to the figure and declaration of affinitie, according to our promiſed order.

CHAP. VII.

Of affinitie or alliance by marriage. The figure and declaration thereof.

AFfinitie is (after the Lawes) *perſonarum proximitas proueniens ex iuſtis nuptijs*: as much in effect, as a neereneſſe of perſons proceeding frō lawful marriages[a]: for ſo it is contracted, and not otherwiſe, after the ciuil lawes: howbeit the canons haue and doe alſo, reſpect affinitie in this place, as wee haue mentioned of conſanguinitie in the chapter going before, that is to ſay, Equally contracted in matrimonie, and otherwiſe[b]: for after the canons, it is (Affinitie) *perſonarum proximitas ex quocunque coitu proueniens: omni carens parentela*, A neereneſſe of perſons proceeding from euerie carnall knowledge, without any maner of parentage, or auncеſtrie. And of that affinitie we ſpeake of here: ſo called (*Affinitas*) *quaſi duorum ad vnum finem vnitas*: As much to ſay, as an vnion or conſolidation of two, *viz.* that be diuerſe in one: for ſo they

[a] L. Non facile. ¶. affines. & ¶. ſciendum ff. de grad. affinit.

[b] De prob. d. c. per tuas. ſtatut. præal. H. 8. Anno. 28. c. 7

they be, diuerſe kinreds, by marriage or other copulations conioyned.

By this, it is contracted (Affinitie) two manner of waies; Firſt by lawfull marriages; next by vnlawfull knowledge[c]: And hereof there be three ſortes or kinds. The firſt is contracted thus, *viz.* My brother & I be Conſanguins in the firſt degree, he taketh a wife, hir they call *Perſonam additam perſonæ per carnis copulam*, as much in effect as, a perſon added to another by carnall or fleſhly knowledge: this is the firſt kind of affinitie, contracted by meanes of my brother; that is to ſay, betweene his wife and me: and the firſt degree: for thus they be (the kinds and degrees) diſcerned in affinitie, *viz.* By the perſons that be in conſanguinitie or bloud, neerer or further off: diſtinguiſhed in the figure before, by their ſeuerall diſtance. For example, my brother is the firſt degree to me in conſanguinitie: his wife in affinitie: my brothers ſonne, in the ſecond: his nephew in the third: his nephews ſonne, in the fourth, they in conſanguinitie: their wiues in the ſame degrees; ſecond, third, or fourth vnto me, but they in affinitie: they alter verily *attinentiam*, theſe added perſons: that is to ſay, They attaine not to (in me) by their addition that, that I haue attained (by bloud) in the perſons they be added vnto: for hercin (that is to ſay, in attinencie) we be diſtinguiſhed by conſanguinitie, and affinitie: briefly (that I may vſe the termes) my brother is my conſanguine, his wife my affine, onely they retaine and participate with me the degree, be it firſt, ſecond, third, or fourth, that I haue with the perſons they be carnally known by, the which they alter not.

[c] c. Diſcretionem. c. penult. ext. de eo qui cog. conſang. vx. ſuæ.

Consequently they shalbe, euerie person in consanguinitie to my wife, in affinitie vnto me; in what degree in the one, in that degree in the other; but alwaies in the first kinde, be they brother, sister, nephew, neece, or any other person mentioned in this figure: for note, it conteineth not (this figure) but onely affinitie in the first kinde, and that to the fourth degree: forasmuch as the prohibition of marriage, by the canons (now) exceedeth not the same in kind, nor degree.[d]

[d] c. Non debet consan. & aff.

It shalbe necessarie heere, wee further declare the force and operation of affinitie (touching this prohibition of marriage) that is sprung by vnlawfull knowledge, either in matrimonie, or without; for so it may be as vnlawfully contracted in the one, as in the other; as if *Titius* shall haue knowledge with *Berta*, whose mother hee marries afterwardes, and knowes hir likewise carnally, in this case shall *Titius* be diuorced from *Bertas* mother, and prohibited to contract with *Berta* hir selfe; and the reason is, *Titius* shall not dwell with the mother whom he married, because hee contracted affinitie with her before, in his knowledge had with hir daughter. And he shall not marrie with *Berta*, because he contracted affinitie also with hir, in his knowledge had with hir mother: and therefore (in this case) the first affinitie dissolues the marrimonie had with the mother: the second hinders the matrimony to be had with the daughter.

Stat. anno 28. Hen. 8 cap. 8. verse, and further to dilate. &c. Hæc etiã per can. permissum iuris.

Briefly thus the law considers in these cases, *viz.* which goeth before, or followeth, the affinitie, or the contract; if affinitie, then the contract is disabled that is had afterwardes; but if the contract, that affinitie preuai-

preuaileth nothing that is ſubſequent. We ſhall not greatlie ſeeme to digreſſe from our purpoſe briefly to rehearſe the other two kinds of affinitie, if but to diſtinguiſh the later frō the repealed Canons: for note, the prohibition alſo extended vnto them[e].

C. diſcretionem c. tuæ, c. fin. de eo qui cog. conſ. vxoris ſuæ.

[e] 35. Q. 3. c. de affinitate, & ext. de eland. desp. c. inhibitio.

The ſecond kind therfore of affinitie is this, *viz.* Ad to the firſt kind therof a perſon carnallie, as to thy brothers wife (ſuppoſing thy brother to be dead) a ſecond husband, a ſecond husband I tearme him, in reſpect of thy affinitie with hir; for happilie ſhe had vttered a double ſecond before, with theſe thou haſt nothing to do, but this ſecond to thy brother, more properly thy brothers ſucceſſour, is the ſecond kinde of affinitie vnto thee[f].

[f] 35. Q. eod. de propinquis.

If thou wilt haue the third breefly, it is this, ad to thy ſecond affinitie a perſon likewiſe carnallie, as to thy brothers wiues husband (ſuppoſing hir to bee dead as thy brother was before) another wife this is, *Quid pro quo*, one for another, merrily engliſhed. For a reed a Rams horne; but in earneſt, take hir and thy third affinitie together.

So it is ſaid to be *Primum genus, i.* The firſt kind of affinitie, *Quia primo emanat de conſanguinitate: vel quia (vna perſona mediante) contrahitur. Secundum, i.* The ſecond kind of affinitie, *Quia ſecundo loco emanat, poſt primum, vel quia (duabus perſonis mediantibus) contrahitur. Tertium, i.* the third kind of affinitie, *Quia in tertio loco, vel quia (tribus perſonis mediantibus) emanat.*

The effect we haue explaned hereof, in theſe three ſeuerall kindes already, briefly they be ſo called, the firſt of *one*, the ſecond of *two*, the third of *three*; but we proſecute onely the firſt, for the other we haue related

ted them to manifeſt the better this firſt, as alſo to giue a light (as I haue ſayd) of the former Canons, and otherwiſe they haue no being here.

Touching therefore this firſt kind of affinitie, it is to be noted, and ſo it may be gathered by that we haue ſayd before, *viz.* It is contracted *inter ſponſam & conſanguineas ſponſæ*, and againe, *inter ſponſam & conſanguineos ſponſi*, as much to ſay, It is contracted (this firſt kind of affinitie) reciprocally, *i.* betweene the huſband and conſanguines of the wife; and *è conuerſo*, betweene the wife and conſanguines of the huſband, howbeit betweene the conſanguines themſelues, by this marriage, there is no affinitie contracted, more than was betweene *Hobſon* and *Iobſon*, by looking through a hedge when they ſpyed one another: ſomewhat nearer, but *Hoc aliquid nihil eſt, i.* ſo far from this attinencie, that it hath no conſequence at all.

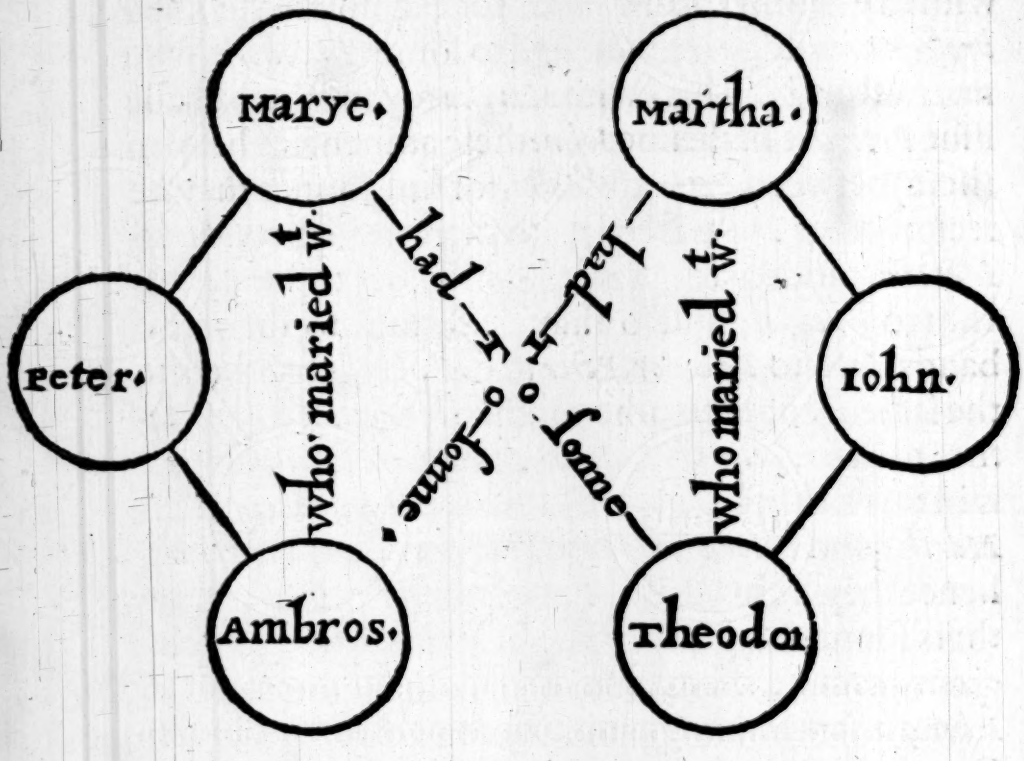
Hence it is that the father and ſonne may contract and conſumate marriage with the mother & daughter, as widdows & widdowers do; & may do, & their ſons and daughters, ſuch as be ſo prouided for their children, when they couenant for themſelues: hence may alſo two brothers contract and conſumate marriage with two ſiſters[g], the like of the vncle and nephew[h].

[g] C. quod ſuper his ext. de conſ. & aff.

[h] C. 1. & 2. eod. tit. xxxv. q. v. ſanè.

Many attinencies may hereby be ſprung between the ſame perſons: this may be ſeen in children of diuers families, that be ſons either of them to their mothers; to their husbands, ſons and brothers; and vncle and nephew, to themſelues. And thus it falleth out, I marrie a wife that hath a ſonne that marrieth with

with my mother, tearme me (for examples sake) *Ambrose*; my wife, *Mary*, who had to sonne *Theodor*, who married (as I did his) with *Martha* my mother; I haue issue *Peter*; he hath issue *Iohn*: these attinencies happen (here) between *Peter* and *Iohn*; for first, sonnes they be reciprocallie, that is to say, to their mothers, *Iohn* to *Martha*, mother to *Ambrose*; and *Peter* to *Mary*, mother to *Theodor*; and so they be sonnes to their husbands; *Iohn* to *Theodor*, *Peter* to *Ambrose*; brothers to the same, *i.* either to others father; *Iohn* to *Ambrose*, father to *Peter*; *Peter* to *Theodor*, father to *Iohn*: for so it is in this example, *Iohn* and *Ambrose* had one mother, *Martha*; and *Peter* and *Theod.* the same mother, *Mary*; hence they be brothers, *Peter* is therefore *Iohns* brothers sonne; and *Iohn*, *Peters* brothers sonne; consequently *Iohn* shalbe vncle to *Peter*, and *Peter* vncle to *Iohn*; how they be nephewes it followeth by this. Conclude them therefore briefly, eache others mothers sonne, eache others fathers brother, eache others vncle, eache others nephew. The figure may be formed, as followeth in the page next ensuing.



The computatiō it hath of degrees, (I meane this affinitie) it borroweth of Conſanguinitie before, *Non habet ſuam ſpeciſlem computationem graduum*, It hath no computation of it ſelfe in degrees; this we haue ſufficiently mentioned in this chapter alreadie, only we may deſcribe the figure, the better to conceiue it formed.

Firſt there be placed in the ſame (in the middeſt) foure compaſſes with ſeuerall ſuperſcriptions, *viz.* In the firſt, the firſt degree, in the ſecond, the ſecond degree, in the third, the third, & in the fourth, the fourth.

On the right ſide to theſe be placed likewiſe foure compaſſes, written in the firſt, *brother*; in the ſecond, *brothers ſonne*; in the third, *brothers nephew*; in the fourth, *brothers nephews ſonne*: againe on the ſame ſide of

of theſe be placed foure other compaſſes, written in the firſt, *brothers wife* : in the ſecond, *brothers ſonnes wife* : in the third, *brothers nephewes wife* : in the fourth, *brothers nephewes ſonnes wife.*

On the left ſide of the firſt foure middle cõpaſſes, be placed likewiſe foure other compaſſes with ſeuerall ſuperſcriptions, *viz.* In the firſt, *ſiſter* : in the ſecond, *ſiſters daughter* : in the third, *ſiſters neece* : in the fourth, *ſiſters neeces daughter*. Likewiſe on the ſame ſide of theſe, be foure other compaſſes, and written in the firſt, *Siſters husband* : in the ſecond, *ſiſters daughters husband* : in the third, *ſiſters neeces husband* : in the fourth, *ſiſters neeces daughters huſband.*

There be added (to theſe) two other compaſſes, on the right ſide one, on the left ſide another : the right ſide compaſſe, conteineth; *Brothers wiues huſband* : the left, *Siſters husbands wife*. In theſe the doctors agree they be added for ornament and demonſtration beſides, of the not prohibited kindes (in affinitie) to marrie at this day, they are not otherwiſe of the ſubſtance of the figure.

There be yet obſerued two bending lines; one beginneth at the compaſſe of *brother*, and endeth at the compaſſe of *ſiſters husband* : wherein is written; *The firſt kind of affinitie prohibited at this day to marry.*

The other beginneth at the compaſſe of *ſiſter*, and endeth at the compaſſe of *brothers wife* : wherein is written the ſame. This forme was firſt inuented, as alſo the figures of conſanguinitie (before) by the famous learned doctor, *Iohan. Andre.* and autenticall in the canons[i] : for after diuers contentions in his time

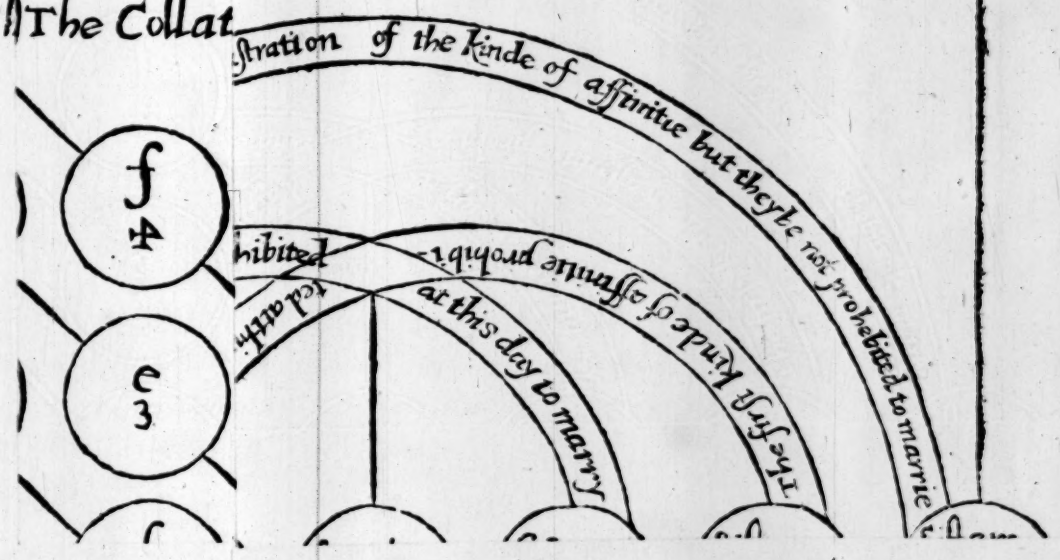
[i] Can. Iſidor. & Alex. 35. Q. 5. c. 1. 2. & vlt.

had, touching the naturall forme of the figure, and the deſcription thereupon of *Iohan. de Deo. Hiſpan.* who ſeemed by his metrical rules, to open thereunto the right vnderſtanding indeed, howbeit the multitude of the ſame, and obſcuritie hee begat in his rules and verſes, brought forth another effect : *Attendens ipſe Iohan. Andr.* For ſo he writeth of himſelfe, *Antiquorum ſcripta, &c.* Recounting with the canons, the auncient and autenticall writers, hee compoſed it: handling therewithall theſe three points beſides amongſt the reſt, *viz.* The neceſſitie of it : the authoritie: the often repetition.

For the firſt, *Probatio ad oculum :* as much to ſay, as an eie witneſſe : the neceſſitie of it appeareth both in the lawes and canons ; this wee haue touched in the ſecond chapter before. For the ſecond, the canons we haue cited here alreadie of *Iſidor.* and *Alexander, viz.* 35 Q. *Cap.* 1.2. *& vlt.* may ſuffice. And for the third, that I may vſe my learned authors words: *nemini venit in dubium : id ſatis eſſe validum, ſatiſque famoſum, quod repitita lectio probat :* Let this ſuffice for affinitie : the figure whereof enſueth.

FVRE OF AFFITIE.

The Collat



CHAP. VIII.

Of the Prohibition Leuiticall.

Ac itaquè conſuetudine quæ ab ipſo exordio humanæ propagationis originem habuit, quam nulla lex contra iubendo euacuauerat, excuſantur Abraam, Iſaac, *&* Iacob, *& ceteri qui de propria cognatione ducebant vxores*[a]. The queſtiō of their ages prouoked (in their times) the makers of the poſitiue canon lawes to anſwere ſuch obiections had againſt the Patriarches and others that had married in their kindreds and tribes of the families of their fathers. They concluded (therefore) they were excuſed (*Abraham*, *Iſaac*, and *Iacob*) by that cuſtome that had growen from the beginning of humane propagation; and that, which no law (then) had aboliſhed.

[a] 35. q. 2. & 3 e. igitur. §. hac itaque.

The premiſſes, or reaſons that they vſed (before) were theſe, *viz.* They were not prohibited[b]: that Idolatry might be auoided[c]: that the Church might be inſtituted in the peculiar people of God[d]. *Deus enim ſic ab initio ſalutem humani generis diſpenſauit, vt primitiuam eccleſiam in illo populo inſtitueret, qui ſibi carnis conſanguinitate erat propinquus:* Hence the Apoſtles were choſen firſt of the Iewiſh nation, whom God appointed (then) the foundation (as it were) of the Church. *Deinde (in cecitate ſuæ perfidiæ Iudaica plebe relictâ)* It was tranſlated afterwardes (the preaching of the goſpel) vnto ſtrangers: *Tam fide, quam cognatione carnis à Chriſto*: Deſpiſing as it were the companie and conuerſation of his cōſanguine, choſe him a wife of another

[b] d. c. eum igitur in princip.
[c] Eod. § eſt quamuis.
[d] Eod. § autem.

ther familie: fulfilling these prophecies [e]: *In peccatis vestris dimisi matrem vestram quasi adulteram & repudiatam, &c. Vocabo plebem meam, non plebem meam.* The canons haue enferred hence, that they were permitted first (these marriages) but now prohibited.

[e] Oseæ.c.4 Isaiah.5 c.

What the Lord commaunded concerning the daughters of *Zelophehad, Mahlah, Tirzah, Hoglah, Milah*, and *Noah*, they did; that is to say, they married to their fathers brothers sonnes [f].

[f] Nomb. 36.

But this was after the commandements and laws which the Lord had commanded by the hand of *Moses* vnto the children of Israel in the plaine of Moab by Iorden, towardes Iericho: these be handled more at large in the table at the end of this treatise, Sect.8. we leaue them therfore here, and to our purpose, the Leuiticall prohibition, *viz.*

Vide tab. sect.8

6 None shall come neere to anie of the kindred of his flesh to vncouer hir shame. I am the Lord. Leuit. 18. & 20.

7 Thou shalt not vncouer the shame of thy father, nor the shame of thy mother, for she is thy mother, thou shalt not discouer hir shame.

8 The shame of thy fathers wife thou shalt not discouer, for it is thy fathers shame.

9 Thou shalt not discouer the shame of thy sister, the daughter of thy father, or the daughter of thy mother, whether she be borne at home, or born without; thou shalt not discouer their shame.

10 The shame of thy sonnes daughter, or of thy daughters daughter, thou shalt not I say, vncouer their shame.

The

11 The ſhame of thy fathers wiues daughter begotten of thy father (for ſhe is thy ſiſter) thou ſhalt not (I ſay) diſcouer her ſhame.

12 Thou ſhalt not vncouer the ſhame of thy fathers ſiſter: for ſhe is thy fathers kinswoman.

13 Thou ſhalt not diſcouer the ſhame of thy mothers ſiſter, for ſhe is thy mothers kinswoman.

14 Thou ſhalt not vncouer the ſhame of thy fathers brother, that is, Thou ſhalt not goe into his wife, for ſhe is thine aunt.

15 Thou ſhalt not diſcouer the ſhame of thy daughter in law, for ſhe is thy ſonnes wife, therefore ſhalt thou not vncouer hir ſhame.

16 Thou ſhalt not diſcouer the ſhame of thy brothers wife, for it is thy brothers ſhame.

17 Thou ſhalt not diſcouer the ſhame of the wife & of hir daughter, neither ſhalt thou take hir ſonnes daughter, nor hir daughters daughter, to vncouer hir ſhame, for they are thy kinsfolkes, and it were wickedneſſe.

18 Alſo thou ſhalt not take a wife with her ſiſter, during hir life, to vexe hir in vncouering hir ſhame vpon her. Theſe in the gloſſe be briefly collected thus *viz.*

Nata, Soror, Neptis, Matertera, Fratris', & vxor.
Et patrui Coniux, Mater, Priuigna, Nouerca.
Vxoris quæ ſoror, Priuigni' Nata, Nuruſquè.
Atque ſoror patris Coniungi lege vetantur.

As much in effect amongſt the reſidue in the admonition or table of prohibited marriages, ſet forth by the moſt reuerend father in God, *Mathew*, Archbiſhop of Canturburie, primate of England, and Metropolitan. An. 1563. as followeth; that is to ſay.

A man may not marrie his

- Mother. — Stepmother. — Wiues mother. — The right aſcending line, and firſt degree.
- Sonnes daughter. — Daughters daughter. — Wiues ſonnes daughter. — Wiues daughters daughter. — The right deſceding line and ſecond degree.
- Daughter. — Wiues daughter. — Sonnes wife. — The right deſcending line and firſt degree.
- Siſter. — Wiues ſiſter. — Brothers wife. — The equall collateral line, and firſt degree.
- Fathers ſiſter. — Mothers ſiſter. — Fathers brothers wife. — The vnequall collaterall line, and ſecond degree.

30 Therfore ſhall ye keepe mine ordinances, that ye doe not any of the abhominable cuſtomes, which haue been done before you.

CHAP.

CHAP. IX.

Of the Prohibition Canonicall.

THe Egyptians were condemned & the Canaanites, in these wicked and incestuous marriages before, the Israelites forewarned therin (by *Moses*) to whom the former prohibition was giuen, for so they were commaunded, the children of Israel, that after the doings of the land of Ægypt, wherin they dwelt, they should not doe; and after the maner of the land of Canaan, whether then the Lord would bring them, they should not doe, nor walke in their ordinances[a]; for in all these the nations were defiled, which then the lord had promised to cast out before them[b]. This condemnation therfore of the Ægyptians, and the Israelites warning, may be spectacles vnto vs.

[a] Leuit. 18.3.

[b] Leuit. 18.34.

The positiue constitutions of the church of England[c], it falleth out to handle the positiue Canon law, but because *Ecclesia anglicana*, *i.* the English church, is neareſt vnto vs, we will handle it first, and the rather, that this order hath seemed the neareſt to manifest (in this chaper) our purpose, the Canons shal ensue afterwards.

[c] In tabula quadam a reuerendissimo patre ac domino Archiepiscopo Cantuar. scripta, publicata, & postea ab Archiepiscop. & Episcop. rescripto imperiali. Anno Elizabethæ. congregat. approbat. & confirmat.

The positiue constitutions therfore of the church of England haue added certaine persons vnto these; that is to say, onely in names and tearmes, but not in de-

degree, for though they be not found to be mentioned in the Leuitical, in their names and tearms their nearneſſe (notwithſtanding) in the ſame degrees, is as manifeſt as the reſt, & whoſe ſhames thou diſcouereſt equally with theirs, & thine owne abhominatiõ together. Be not therfore deceiued, it is not the name of Conſanguinity, or affinity, wherin the ſubſtance cõſiſteth of this prohibition, but the degree. I might cite many laws, but let the ſtatutes ſuffice, they follow in their orders, *viz.* in the chapter next enſuing, there thou ſhalt find them mentioned, not the Leuitical names, but degrees.

Such be in the aſcending line, thy grand-mother, grand-fathers wife, wiues grand-mother; not mentioned (there) in their names and tearmes, equallie (notwithſtanding) diſtant in degree from thee, with thy ſonnes daughter, daughters daughter, wiues ſons daughter, wiues daughters daughter, whom the prohibition comprehendeth, in their ſeueral names and tearmes: adde vnto theſe thy ſons ſons wife, daughters ſonnes wife, whom the church hath decreed the ſame prohibition extends to. For note, their difference is in their lines, *viz.* They be diſtinguiſhed by aſcending and deſcending lines: that is to ſay, Of thy grand-mother and thy ſonnes daughter, and daughters daughter, which be only of the perſons we haue mentioned laſt, conſanguines vnto thee, and in the ſecond degree.

The ſame reaſon (in affinitie) is of the reſt, that is to ſay, Thy grand-fathers wife, thy wiues grand-mother, be equallie (from thee) diſtant with thy wiues ſonnes daughter, & wiues daughters daughter theſe

in

in affinitie, the other in conſanguinity, as for thy ſons ſons wife, daughters ſons wife, they be equals vnto thee with thy wiues ſons daughter, wiues daughters daughter, *i.* They differ not in line nor degree: only as before is ſaid, they be diſtinguiſhed from the perſons we haue mentioned before by conſanguinitie, & affinitie: otherwiſe the prohibition equally holdeth in them all. Such perſons be alſo in the vnequall collaterall lines, *viz.* Thy brothers daughter: thy ſiſters daughter; brothers ſonnes wife; ſiſters ſonnes wife; wiues brothers daughter; wiues ſiſter daughter: that is to ſay, equally diſtant from thee in conſanguinitie, thy brothers and ſiſters daughters, with thy fathers and mothers ſiſters: adde vnto theſe in affinitie thy fathers brothers wife, thy mothers brothers wife, wiues fathers ſiſter, wiues mothers ſiſter: Theſe in the aſcendents. In the deſcendents, to the other; that is to ſay, to thy brothers and ſiſters daughters, conſanguines vnto thee, and deſcendents, adde (in affinitie) thy brothers and ſiſters ſonnes wiues, and thy wiues brothers, and hir ſiſters daughters.

Theſe be all in conſanguinitie and affinitie vnto thee in the vnequall collaterall lines, aſcending and deſcending, aſwel mentioned as not mentioned expreſly in the Leuitical law in their names and termes, in the ſame ſecond degree. This may appeare more plainly in the table of prohibited marriages, comprehended within that table annexed at the end of this booke.

Touching now the canons, *i.* The poſitiue canon lawe, I referre thee to the figures of conſanguinitie and affinitie before, as alſo to this table mentioned.

It ſhalbe therefore needleſſe, further to ſpeake of the prohibition of the canons, than briefly that deſcription and computation canonicall wee haue mentioned alreadie may declare it: for that vnderſtood, vnderſtand withall the prohibition of the canons; that is to ſay, to the fourth degree: for ✠ in that example, may not marrie with any letter in the figure. This exceedeth the poſitiue conſtitutions of the Church of England, in euerie line two degrees, *viz.* Firſt in conſanguintie in the right aſcending line two degrees, *i.* C and D, in the deſcending line likewiſe two degrees, *i.* c.d. in the collaterals, from A two degrees, *i.* d 1. e 1. In the collaterals from B. three degrees, d 2. e 2. f 2. In the collaterals from C and D, euerie perſon that is mentioned; theſe in conſanguinitie.

The prohibition in affinitie is extēded thus, that is to ſay, beyond the poſitiue conſtitutions of the Engliſh Church: frō the firſt ſtocke in the ſame figure vnderſtanding the perſons to be added carnally, for that is the vſe of the figure, as may be gathered by that we haue ſaid in the 7. chapter before, to thy brothers nephews wife. brothers nephews ſonnes wife: ſiſters nephews wife: ſiſters nephews ſonnes wife: brothers neeces ſonnes wife: ſiſters neeces ſonnes wife. From the ſecond ſtocke, to thy fathers brothers ſons wife: fathers brothers nephewes wife: fathers brothers nephews ſonnes wife: mothers brothers ſonnes wife: mothers brothers nephewes wife: mothers brothers nephews ſonnes wife. From the third and fourth ſtocks, to the carnall additions, in either ſex, that be mentioned in their lines. Theſe we haue placed

Vndeſtand (with theſe) their neeces ſonnes wiues.

ced ſeueraliy in their ſections, for the plainer demonſtration thereof in that table at the end of this booke. The reaſons that the canons haue yeelded of this extenſion is this, *viz.*

Habita eſt enim illis ratio certiſsima charitatis, vt homines quibus eſſet vtilis atque honeſtiſsima concordia, diuerſarum neceſsitudinum vinculis necterentur: nec vnus in vno multas haberet neceſsitudines, ſed ſingulæ ſpargerentur in ſingulos ſi ad ſocialem vitam diligentius plurimos obtinerent. Pater quippe & ſocer duarum ſunt neceſsitudinum nomina; dum ergo habet quis alium patrem, alium ſocerum, numeroſius ſe charitas porrigit: vtrumquè autem vnus ſc. Adam *eſſe cogebatur, & filijs, & filiabus ſuis, quando fratres ſorores què iungebantur coniugio; ſicut* Eua *vxor eius vtrique ſexui filiorũ, fuit & ſocrus, & mater. Quæ ſi duæ feminæ fuiſſent, altera mater, altera ſocrus, copioſius ſe dilectio ſocialis colligaret. Sed hoc vnde fieret tunc non erat, quando niſi fratres & ſorores ex illis duobus primis nulli homines erãt. Fieri ergo debuit quod potuit, vt exiſtente copia vnde ducerentur vxores, quæ iam non erant ſorores, non ſolum illud non fieret, vbi nulla neceſsitas eſſet, verumetiam ſi fieret, nefas eſſet: quod humano genere creſcente, etiam inter impios deorum multorum falſorumque cultores, ſic obſeruari cernimus: vt etſi legibus permittantur fraterna coniugia, melior tamen conſuetudo ipſam malit exhorrere licentiam: ſic què aduerſetur quæ ſi licere nunquam potuerit. Copulatio ergo maris & feminæ (quantum attinet ad genus humanũ) quoddam ſeminarium eſt charitatis;* That is to ſay, in ſumme, though not in literall conſtruction, (beſides other arguments of greater conſequence in the lawes of God and of nature) they grounded thereupon an infallible argument to enſue of loue and charitie, if

men and women *Diuersarum necessitudinum vinculis*, as much to say, should knit themselues togither with bonds of sundry friendships, and not that one in one should haue many: such be the persons mentioned in their seuerall sections in the table heere ensuing from thy grandmother, *Sect.* 1. *Num.* 1. to thy wiues mothers sisters daughter, *Sect.* 8. *num.* 42. And euery ascending person and descending rightly in euery section after; namely from thy great grandmother, *Sect.* 9. *num.* 43, to thy daughters neeces daughter. *Sect.* 17. *num.* 106. Father is a name vnto thee of tender kindnesse; none neerer, none dearer: thou makest of him thine vncle: and again of him (I mean thine vncle) thou makest thy father in-law, whilst thou matchest in that kindred, see *Sect.* 8. It is needlesse to wade through euery particular sectiō; the table is at hand, and the same reason holdeth in the rest: the neerer therfore thou cōmest to the kindred of thy flesh, the further off thou art frō friendship that is expedient, that amitie (I mean) and loue, that all mankind vpholdeth, and is vpholden by it: for what is that coniunction we speake of, of man and woman? *Quantum attinet ad genus humanum?* It is answered thus, That is to say; So farre as it toucheth humane kind, it is nothing els but *quoddam seminariū charitatis*. And how behoofefull & expedient is this, there is none that cannot discerne: the which how it riseth and spreadeth abroad it selfe, we haue declared in the chapter of affinitie before.

CHAP.

Pre
ma

CHAP. X.

Of the succession of the statutes in marriage: and their force at this day.

TOuching the succession & their force, (of the Statutes) it followeth as it was enacted in *An.* xxv. of king *Hen.* 8. cap 22. *viz.* Since many incõueniẽces haue fallen aswell within this Realm, as in others, by reason of marrying within the degrees of mariage prohibit by Gods laws, *i.* The son to marrie the mother or the stepmother, The brother the sister, the father his sons daughter, or his daughters daughter, or the son to marry the daughter of his father, procreate and borne by his stepmother, or the sonne to marrie his aunt, being his father or mothers sister, or to marrie his vncles wife, or the father to marrie his sonnes wife, or the brother to marrie his brothers wife, or any man to marrie his wiues daughter, or his wiues sonnes daughter, or his wiues daughters daughter, or his wiues sister, which marriages albeit they be plainly prohibited, and detested by the laws of almighty God, yet neuertheless at some times they haue proceeded vnder coloures of dispensations by mans power, which is but vsurped, and of right ought not to be graunted, admited, ne allowed, for no man, of what estate degree or cõdition soeuer he be, hath power to dispence with Gods laws, as all the cleargie of this realme, and the most part

part of all the famous vniuerſities of Chriſtendome, and we alſo do affirme and thinke.

Be it therefore enacted by auctoritie, aforeſaied, that no perſon or perſons, ſubiects or reſiants of this Realme, or in any your dominions of what eſtate, degree or dignitie ſoeuer they be, ſhal from henceforth marrie withn the ſayd degrees afore rehearſed, what pretence ſoeuer ſhalbe made to the contrarie thereof.

And in caſe any perſon or perſons of what eſtate, dignitie, degree, or condition, ſoeuer they be, hath beene heretofore, married within this Realme or in any the kings dominions, within any the degrees aboue expreſſed, and by any of the Archbiſhops, Biſhops, or miniſters of the church of England, be ſeparate from the bonds of ſuch vnlawfull marriage, that then euerie ſuch ſeparation ſhalbe good, lawful, firme, and permanent for euer, and not by any power auctoritie or means to be reuoked or vndone hereafter. And that the children proceeding or procreate vnder ſuch vnlawfull marriage, ſhall not be lawfull ne legitimate: any forreine laws, licences, diſpenſations, or other thing or things to the contrarie therof notwithſtanding. And in caſe there be any perſon or perſons, within this Realm, or in any the kings dominions, already married within any the ſaid degrees aboue ſpecified, and not yet ſeparate from the bonds of ſuch vnlawfull marriage, that then euerie ſuch perſon ſo vnlawfullie married, ſhalbe ſeparate by the definitiue ſentence & iudgements of the Archbiſhops, Biſhops, and other miniſters of the church of England, and in other your dominions within the limits

of

of their iurisdictions and authorities, and by none other power or authoritie.

And that all sentences and iudgements giuen, and to be giuen, by any Archbishops, Bishops, or other minister of the church of England, or in any other the kings dominiõs, within the limits of their iurisdictions and authorities, shalbe diffinitiue, firme, good, and effectuall to all intents, and be obserued and obaied without suing any prouocations, appeals, prohibitions, or other processe from the court of Rome, to the derogation thereof, or contrarie to the Acte made since the beginning of this present Parlement, for the restraint of such prouocations, appeals, prohibitions, and other processes.

And *Anno xxviij.* of king *Hen.*8. Chap 7. it was enacted to the same effect, and in the same forme of wordes with this addition onely, *viz.*

And further to dilate and declare the meaning of these prohibitions, it is to be vnderstood, that if it chaunce any man to know carnallie any woman, that then all and singular persons being in any degree of consanguinitie or affinitie as is aboue written to any of the parties so carnallie offending, shalbe deemed and adiudged to bee within the cases and limmits of the said prohibition of marriage.

There ensued after this *Anno*, *xxxij. Hen.*8. cha. 38. an act concerning precontracts of marriages, and touching degrees of consanguinitie, the occasion whereof (as by the proheme of that Statute appeareth) was this, *viz.*

It was supposed that no marriage so surelie could be knit & bounden, but that it should lie in either of the

the parties powers, caſting away the feare of God by meanes and compaſſes to proue a precontract, a kinred, an allyance, or a carnal knowledge to defeate the ſame, and ſo vnder pretence of theſe allegations, liue all the daies of their liues afterwardes, in ſinne and wickedneſſe. Therefore it was enacted as followeth. *viz.*

All and euerie ſuch marriages, as within this church of England ſhalbe contracted between lawfull perſons (as by this acte we declare, all perſons to be lawfull that be not prohibited by Gods law, to marrie) ſuch marriages, being contract and ſolemnized in the face of the church, & conſumate with bodily knowledge, or fruicte of children or child being had therein between the parties ſo married, ſhalbe by authority of this preſent parlement aforeſaid deemed iudged, and taken to be lawfull, good, iuſt, and indiſſoluble, notwithſtanding any precontract, or precontracts of matrimonie not conſumate with bodily knowledge, which either of the perſons ſo married, or both ſhall haue made with any other perſon or perſons before the time of contracting that marriage which is ſolemniſed or conſumate, or wherof ſuch fruict is enſued, or may enſue as afore, & notwithſtāding any diſpenſation, preſcription, law, or other thing graunted or confirmed by acte or otherwiſe.

And that no reſeruation or prohibitiō (Gods law except) ſhall trouble or impeache any marriage without the leuiticall degrees, and that no perſon of what eſtate degree or condition ſoeuer he or ſhe be, ſhall after the ſayd firſt day of the month of July aforeſaid, *viz.* in *Anno Dom.* 1540. be admitted in any of the

ſpiri-

spirituall courts, within this the kings Realme or any his graces other lands and dominions, to any processe, plee, or allegation, contrarie to this present act.

This Statute continued till 2. and 3. of king Edward 6. Cap. 23. which by that time gaue such scope and libertie to breache of promise and faith, as also to pleasure, sensualitie, and lightnesse, that so farre forth it was found conuenient to be repealed, as then it was repealed, namely concerning precontracts, and not otherwise.

Afterwards in *Anno* 1. and 2. of *Ph. l.* and *Mar.* the residue of that act of king *Hen.* 8. which had giuen liberty to marry *Infra gradus prohibitos Consanguinitatis, affinitatis, cognationis spiritualis*, or which might haue been voided, *Propter impedimentum publicæ honestatis, iustitiæ*, or for any other cause prohibited by the Canons, only was repealed.

But this later repeale of this later braunch, was reuiued againe in *Anno* 1 *Eliz.* Cap. 1. since which time hath remained that libertie to marrie without the Leuiticall degrees which was graunted by that former Statute of king *Henrie* 8. and here before mentioned.

Thus much I haue gathered together, and applyed (to my slender skill) to that part of policie that is mentioned in this worke, the which if it be not, namelie to the title of the same, perfect in euerie point, alwaies vnderstood that is handled here, let no man doubt there wanteth; but if it be not perfect so, as England standeth and is gouerned at this day, the 18. of August, An. Do. 1594 and 36. yeare of the raigne

and adminiſtration thereof, by the vetuous and moſt noble Queene *Elizabeth*, natural & legitimate daughter to king *Hen.* of famous memorie the eight, the author is imperfect, whoſe weakeneſſe if thy skil ſhall ſupply, or thy patience beare for a ſeaſon, he craues no more, in the meane time his labours he commendeth vnto thee, and thy ſelfe to the author of all perfection.

FINIS.

A TABLE OF THE Leuiticall, Engliſh, and poſitiue Canon Catalogues:

THEIR CONCORDANCE, and difference.

Anno. Dom. 1594.

¶ Of the Table and Catalogues heerin contained of degrees.

CONferring theſe Catalogues in the table that enſueth together, that is to ſay, the Engliſh and Canonicall with the Leuitical, ſome perſons there ſhall appeare within the Leuiticall names and degrees; ſome without the Leuiticall names, but in the degrees; others there ſhall appeare without the Leuiticall names and degrees; the due conſideration whereof is this, *viz.*

Firſt of the aſcendents and deſcendentes, ſuch no doubt, though they exceed the Leuiticall names and degrees, yet they be prohibited infinitelie to marrie, in ſo much that *Adam* if he had liued to this day, could not haue married againe.

The ſecond conſideration, *viz.* of the Collaterals, ſuch (with the Leuitical in name and degree) no man doubteth of their prohibition; otherwiſe, that is to ſay, If they differ but in name, *Communi cõſenſu & iudicio putantur in Leuitico prohiberi*, thou art (for example) expreſly in the Leuiticall forbidden to marrie thy brothers wife, thy wiues ſiſter is not mentioned there in name, otherwiſe than thus, *viz.* Thou ſhalt not take a wife with hir ſiſter (during hir life) to vexe hir in vncouering hir ſhame vpon hir; but thy brothers

wife neuertheleſſe comprehendeth hir degree, and whom equally therefore thou art prohibited to marry, that is to ſay, as with thy brothers wife, ſo with thy wiues ſiſter, this vnderſtand of the reſidue in this table, *viz.* Mothers brothers wife, wiues fathers ſiſter, &c. For the third, that is to ſay, ſuch collaterals as exceed both the name and degree Leuitical, doe alſo exceed this prohibition, *i.* they may marrie without queſtion or ſcruple, conſideration had of ſuch collaterals as doe ſauour ſo of the aſcendent and deſcendent lines, that they be parents, or *in loco parentum* the one to the other, ſuch be in names collaterals, becauſe we haue no other tearms to cal them by, *Plures enim ſunt res quàm vocabula*, ſuch is the ſcarſity of our ſpeech, that more things there be, than wee haue names to call them by; ſuch be thy brothers line, ſo neere thine own as may be, we muſt not call them deſcendents, for confounding of lines, nor yet allow them that laterall libertie to make them outward degrees, *Laterall* they be tearmed or *Collaterall à latere*, as much in effect as ſideward of the ſide wheron they be placed, as by the figure it may appeare and other deſcriptions in the treatiſe: but ſo neer they be the ſide, that they warme it, and be warmed by it, ſide by ſide, and bloud by bloud; and yet we muſt call them Collaterals, and yet I exhort thee beware of them, they be not forbidden expreſlie, and by name by the law, the Leuiticall law I meane, no more thou ſhalt finde it forbidden expreſly to marrie with diuers other perſons of thy kinred beſides, thou wilt not therfore ſay it is lawful, god forbid thou ſhouldſt. This I haue red in the works of learned men, it is for

bidden

bidden by the right of nature, it is forbidden, by the law that is written in euerie mans heart and conſcience, it is forbidden by loue and charitie, the which we haue handled in this treatiſe before, it is forbidden by title and right of nigh kinred: to conclude, many great things ſhalt thou finde, if thou lookeſt about thee, not forbidden expreſly by the law that *Moſes* made, and yet the ſame be forbidden by a certaine plaine expreſſe commaundement of nature, and conſequently by the law of God: for what commaunded *Moſes* from the Lord, as lawfull to be done, that was not expedient? Shall we ſeeke a prohibition then by name, for euerie perſon, and do the thing (if we finde it not) that is neither expedient nor honeſt? God forbid. I finde it written of *S. Ambroſe*, that he affirmed plainlie, The lawe of God forbiddeth that brothers children ſhould marry, and yet I cannot finde it there expreſly; the occaſion grew by one *Patern*, that had a ſonne by one woman, and a daughter by another, which daughter had a daughter, whom *Patern* would haue married to his ſonne, the maidens halfe vncle, wherein conſulting with *Ambroſe* in this caſe, receiued this aunſwere; I neither thinke nor iudge, ſaith *S. Ambroſe*, that your biſhop an holy man doth ſo much as looke after my ſentence and iudgement in this matter, for if he had, he would haue written to me of it, and in ſomuch that he writeth not, he ſheweth plainly that he iudgeth this no matter to be doubted on: for what doubt may there be in this caſe, whether thy ſonne and thy daughters daughter, or thy neece by thine owne daughter may marry together, ſeeing the law of God

forbiddeth, that thy ſon ſhould marrie with thy brothers daughter. And what (ſaith the ſame author) is more ſolemne, accuſtomed, or more reuerentlie obſerued, than the charitable kiſſe betweene vncle and neece, which he oweth to hir of duety, as to his daughter, &ſhe to him as to hir father? ſhalt thou then go & make this innocent kiſſe of loue and charity, in which is none offence nor ſuſpitiõ of euil, to be ſuſpected, whilſt thou intẽdeſt ſuch a mariage? as if he ſhuld ſay, Wilt thou betray (as *Iudas* did his maiſter) the holy law of nature, & take away from thy dear pledges or children ſo deuout & religious (a ſacrament) he tearmeth it, but a token of pure and naturall loue, as alſo he doth, wee may terme it ſtil.

And touching the furtheſt diſtant of the perſons we haue meutioned laſt, *viz*. Brothers children, becauſe in a maner, they be brothers and ſiſters, cõming all of one parent, grandfather grandmother, or both; but the ſecond ſtocke of the tree, or figure of Conſanguinitie, in this treatiſe before, if it were for nothing elſe, yet for the reuerence that they owe to the ſame parẽts, *Theodoſ* the Emperour would haue them abſtain from marriage the one with the other. But to leaue the Emperours law, there is a law of this land, (the Lord preſerue it and the life of the ſame) this we haue touched in the diuiſion of this table hereafter; but there is a law, and this we haue touched too, the Lord write it in our minds and in our hearts, that he may be our God, and we may be his people. *Amen.*

A Table of the Leuiticall, Engliſh, *and poſitiue canon catalogues: their concordance, and difference.*

1. Section.

2. Deg. *The right aſcending line, and ſecond degree.*

Can. Eng.	Grandmother.	1	*Con.*
	Grandfathers wife.	2	*Aff.*
	Wiues Grandmother.	3	*Aff.*

2. Section.

2. Deg. *The vnequall collaterall line aſcending, and ſecond degree.*

Can. Eng. Leu.	Fathers ſiſter.	4	*Con.*
	Mothers ſiſter.	5	*Con.*
	Fathers brothers wife.	6	*Aff.*
Can. Eng.	Mothers brothers wife.	7	*Aff.*
	Wiues fathers ſiſter.	8	*Aff.*
	Wiues mothers ſiſter.	9	*Aff.*

3. Section.

1. Deg. *The right aſcending line, and firſt degree.*

Can. Eng. Leu.	Mother.	10	*Con.*
	Stepmother.	11	*Aff.*
	Wiues mother.	12	*Aff.*

4. Section.

1. Deg. *The right descending line, and first degree.*

Can. Eng. Leu.	Daughter.	13	*Con.*
	Wiues daughter.	14	*Aff.*
	Sonnes wife.	15	*Aff.*

5. Section.

1. Deg. *The equall collaterall line, and first degree.*

Can. Eng. Leu.	Sister.	16	*Con.*
	Brothers wife.	17	*Aff.*
	Wiues sister.	18	*Aff.*

6. Section.

2. Deg. *The right descending line, and second degree.*

Can. Eng. Leu.	Sonnes daughter.	19	*Con.*
	Daughters daughter.	20	*Con.*
Can. Eng.	Sonnes sonnes wife.	21	*Aff.*
	Daughters sonnes wife.	22	*Aff.*
Can. Eng. Leu.	Wiues sonnes daughter.	23	*Aff.*
	Wiues daughters daughter.	24	*Aff.*

7. Section.

2.Deg. *The vnequall collaterall line descending, and second degree.*

Ca.En.	Brothers daughter.	25	*Con.*
	Sisters daughter.	26	*Con.*
	Brother sonnes wife.	27	*Aff.*
	Sisters sonnes wife.	28	*Aff.*
	Wiues brothers daughter.	29	*Aff.*
	Wiues sisters daughter.	30	*Aff.*

8. Section.

2.Deg. *The equall collaterall line, and second degree.*

Canon.	Fathers brothers daughter.	31	*Con.*
	Mothers brothers daughter.	32	*Con.*
	Fathers sisters daughter.	33	*Con.*
	Mothers sisters daughter.	34	*Con.*
	Fathers brothers sonnes wife.	35	*Aff.*
	Mothers brothers sonnes wife.	36	*Aff.*
	Fathers sisters sonnes wife.	37	*Aff.*
	Mothers sisters sonnes wife.	38	*Aff.*
	Wiues fathers brothers daughter.	39	*Aff.*
	Wiues mothers brothers daught.	40	*Aff.*
	Wiues fathers sisters daughter.	41	*Aff.*
	Wiues mothers sisters daughter.	42	*Aff.*

Hitherto extendeth the heart of the tree, or figure of consanguinitie, described in the sixt chapter before, and formed at the end of the 7. chapter following,

lowing, where the reader may behold, as in a glaſſe, howe neere they be couched togither; namely, the kinred of the ſame fleſh.

Heere therefore we will pauſe a little, and make as it were a diuiſiõ in thistable betweene them and the reſt that enſue; namely, the branches that be further off. Conſider therefore of the concordance and difference of theſe catalogues hitherto firſt, and then peruſe the other.

Theſe catalogues doe concurre togither in 16 perſons, wherein they differ not in name, number, nor degreee: there the Leuiticall ceaſſeth, in name and number; and the Engliſh and canonicall go on, accompanied ſtill with the Leuiticall degree, to the number of 14 perſons more: there ceaſſeth the Engliſh, and the poſitiue canon goes on alone, neuertheleſſe accompanied with the 2 degree, to the number of 12 perſons more;and there that degree reſteth, and leaueth the canon catalogue alone, & yet the catalogue reſteth not,but hath betakẽ it to outward degrees, namely the 3 and 4, wherewith it goeth on to the number of perſons mentioned in this table hereafter.

Theſe the ſtatute doth entend in *An.*32.*H.*8.*cap.* 38. to be meere humane,and inuented for their lucre that deuiſed them: namely, the BB. of the ſea of Rome, commonly called the Popes; who were enabled (as the ſtatute intẽdeth) to diſpence with ſuch by their power, becauſe they were outward, and ſo the ſtatute termeth them *outward degrees*; and ſpecifieth moreouer coſens germans, and ſo to fourth and fourth degree. Now, *Quere* of the minde of the ſtatute

tute touching cosens germans, *viz.* What germans they should be? for the Pope could neuer dispence with germans in the 1 and 2 degrees: if therfore the construction be of the statute, of such dispensations that were reserued; for so the statute mentioneth them, *viz.* *The dispensation whereof they alwaies reserued to themselues, &c.* we looke amisse at what he did, for what did hee not almost (in the end) dispence withall? but our marke must be at what he might doe lawfully, *i.* by his lawes: for other reseruation had he none, but thereby preheminence ouer them, but neuer ouer the lawes of God nor of nature. And that which is more, so farre they were from dispensing in the 1 and 2 degrees, that in the 3 and 4 degrees they haue refused the same generally: and to that (vpon Question proposed to *Gregorie*, by *Felix Messan* of Scicilia) was appealed to, the whole dominon of Rome. It is euident by this, what the prohibition and reseruation haue been of the Popes law.

Touching the daughter of *Zolophehad*, of whom mention hath been made in the 8 chap. of this treatise, to this effect, that they married to their fathers brothers sonnes: this was because the inheritance of the children of Israel, of whom the daughters of *Zelophehad* were, should not remoue from tribe to tribe: for so they were commanded, that euerie one of the children of Israel, should ioyne himselfe to the inheritance of the tribe of his fathers. And that euerie daughter that possessed anie inheritance of the tribes of the children of Israel, should be wife vnto one of the familie of the tribe of hir father, that the children

of Israel might enioy euery man the inheritance of their fathers: and therefore the Lord commanded concerning the daughters of *Zelophehad*, saying; *They shall be wiues to whom they thinke best, onely to the familie of the tribe of their father shal they marry*, and so they did.

Numb. 36. 11.

But this was a law of iudgement, as other Iudicials were, that belonged (then) to particular iustice, and haue had their beginnings, and endings. To the rest of the canon catalogue.

Numb. 27. 11.

9. Section.

3. Deg. *The right ascending line, and third degree.*

Canon.

Con.	43	Great grandmother.
Aff.	44	Great grandfathers wife.
Aff.	45	VViues great grandmother.

10. Section.

3. Deg. *The right descending line and third degree.*

Con.	46	Sonnes neece.
Con.	47	Daughters neece.
Aff.	48	Sonnes nephewes wife.
Aff.	49	Daughters nephewes wife.
Aff.	50	VViues nephewes daughter.
Aff.	51	VViues neeces daughter.

11. Section.

3. Deg. *The vnequall collaterall line ascending, and third degree.*

Con.	52	Grandfathers sister.

Con.

Con.	53	Grandmothers ſiſter.
Aff.	54	Grandfathers brothers wife.
Aff.	55	Grandmothers brothers wife.
Aff.	56	VViues grandfathers ſiſter.
Aff.	57	VViues grandmothers ſiſter.

12. Section.

3. Deg. *The ſame line, and third degree.*

Con.	58	Grandfathers brothers daughter.
Con.	59	Grandmothers brothers daughter.
Con.	60	Grandfathers ſiſters daughter.
Con.	61	Grandmothers ſiſters daughter.
Aff.	62	Grandfathers brothers ſonnes wife.
Aff.	63	Grandmothers brothers ſonnes wife.
Aff.	64	Grandfathers ſiſters ſonnes wife.
Aff.	65	Grandmothers ſiſters ſonnes wife.
Aff.	66	Wiues grandfathers brothers daughter
Aff.	67	Wiues grandmothers brothers daugh.
Aff.	68	Wiues grandfathers ſiſters daughter.
Aff.	69	Wiues grandmothers ſiſters daughter.

Canon.

13. Section.

3. Deg. *The equall collaterall line, and third degree.*

Con.	70	Grandfathers brothers neece.
Con.	71	Grandmothers brothers neece.
Con.	72	Grandfathers ſiſters neece.
Con.	73	Grandmothers ſiſters neece.
Aff.	74	Grandfathers brothers nephews wife.
Aff.	75	Grandmothers brothers nephews wife

Affi.	76	Grandfathers ſiſters nephewes wife.
Affi.	77	Grandmothers ſiſters nephewes wife.
Affi.	78	Wiues grandfathers brothers neece.
Affi.	79	Wiues grandmothers brothers neece.
Affi.	80	Wiues grandfathers ſiſters neece.
Affi.	81	VViues grandmothers ſiſters neece.

14. Section.

3. Deg. *The vnequall collaterall line, deſcending, and third degree.*

Con.	82	Fathers brothers neece.
Con.	83	Fathers ſiſters neece.
Con.	84	Mothers brothers neece.
Con.	85	Mothers ſiſters neece.
Affi.	86	Fathers brothers nephews wife.
Canon. Affi.	87	Fathers ſiſters nephewes wife.
Affi.	88	Mothers brothers nephews wife.
Affi.	89	Mothers ſiſters nephews wife.
Affi.	90	VViues fathers brothers neece.
Affi.	91	VViues fathers ſiſters neece.
Affi.	92	VViues mothers brothers neece.
Affi.	93	VViues mothers ſiſters neece.

15. Section.

3. Deg. *The ſame line and third degree.*

Con.	94	Brothers neece.
Con.	95	Siſters neece.
Affi.	96	Brothers nephewes wife.
Affi.	97	Siſters nephews wife.
Affi.	98	VViues brothers neece.
Affi.	99	VViues ſiſters neece.

16. Section.

4. Deg. *The right aſcending line, and fourth degree..*

Con.	100	Great grandfathers mother.
Aff.	101	Great grandfathers fathers wife.
Aff.	102	Wiues great grandfathers mother.

17. Section.

4. Deg. *The right deſcending line, and fourth degree.*

Con.	103	Sonnes nephews daughter.
Con.	104	Sonnes neeces daughter.
Con.	105	Daughters nephews daughter.
Con.	106	Daughters neeces daughter.
Aff.	107	Sonnes nephews ſonnes wife.
Aff.	108	Sonnes neeces ſonnes wife.
Aff.	109	Daughters nephews ſonnes wife.
Aff.	110	Daughters neeces ſonnes wife.
Aff.	111	Wiues ſonnes nephews daughter.
Aff.	112	Wiues ſonnes neeces daughter.
Aff.	113	Wiues daughters nephews daughter.
Aff.	114	Wiues daughters neeces daughter.

18. Section.

4. Deg. *The vnequall collateral line deſcending, and fourth degree.*

Con.	115	Great grandfathers ſiſter.

Canon.

Con. 116 Great grandmothers ſiſter.
Aff. 117 Great grandfathers brothers wife.
Aff. 118 Great grandmothers brothers wife.
Aff. 119 Wiues great grandfathers ſiſter.
Aff. 120 Wiues great grandmothers ſiſter.

19. Section.

4. Deg. *The ſame line, and fourth degree.*

Con. 121 Great grandfathers brothers daughter.
Con. 122 Great grandfathers ſiſters daughter.
Con. 123 Great grādmothers brothers daughter.
Con. 124 Great grandmothers ſiſters daughter.
Aff. 125 Great grandfathers brothers ſons wife.
Canon. Aff. 126 Great grandfathers ſiſters ſonnes wife.
Aff. 127 Great grandmothers brothers ſonnes wife.
Aff. 128 Great grandmothers ſiſters ſons wife.
Aff. 129 Wiues great grandfathers brothers daughter.
Aff. 130 Wiues great grandfa. ſiſters daughter.
Aff. 131 Wiues great grandmothers brothers daughter.
Aff. 132 Wiues great grandmothers ſiſters daughter.

20. Section.

4. Deg. *The ſame line continued ſtill, and fourth degree.*

Con. 133 Great grandfathers brothers neece.

Con

Con.	134	Great grandfathers ſiſters neece.
Con.	135	Great grandmothers brothers neece.
Con.	136	Great grandmothers ſiſters neece.
Aff.	137	Great grandfathers brothers nephews wife.
Aff.	138	Great grandfathers ſiſters nephews wife.
Aff.	139	Great grandmothers brothers nephews wife.
Aff.	140	Great grandmothers ſiſters nephews wife
Aff.	141	VViues great grandfathers brothers neece.
Aff.	142	Wiues great grãdfathers ſiſters neece.
Aff.	143	Wiues great grandmothers brothers neece.
Aff.	144	VViues great grandmothers ſiſters neece.

Canon.

21. Section.

4. Deg. *The Equall collaterall line, and fourth degree.*

Con.	145	Great grãdfathers brothers nephews daughter
Con.	146	Great grandfathers brothers neeces daughter.
Con.	147	Great grandmothers brothers nephews daughter.
Con.	148	Great grandmothers brothers neeces daughter.
Aff.	149	Great grãdfathers brothers nephews ſonnes wife.

Aff. 150 Great grandfathers brothers neeces ſonnes wife.

Aff. 151 Great grãdmothers brothers nephews ſonnes wife.

Aff. 152 Great grandmothers ſiſters nephews ſonnes wife.

Aff. 153 VViues great grandfathers brothers nephews daughter.

Aff. 154 VViues great grandfathers brothers neeces daughter.

Aff. 155. VViues great grãdmothers brothers nephews daughter.

Aff. 156 VViues great grãdmothers brothers neeces daughter.

21. Section.

Canon.

4. Deg. *The vnequall collaterall line deſcending, and fourth degree.*

Con. 157 Grandfathers brothers nephewes daughter.

Con. 158 Grandfathers ſiſters nephews daughter.

Con. 159 Grandmothers brothers nephewes daughter.

Con. 160 Grãdmothers ſiſters nephews daughter.

Aff. 161 Grandfathers brothers nephews ſonnes wife.

Aff. 162 Grandfathers ſiſters nephews ſonnes wife.

Aff.	163	Grãdmothers brothers nephews ſons wife.	
Aff.	164	Grandmothers ſiſters nephews ſons wife.	
Aff.	165	Wiues grãdfathers brothers nephews daughter.	
Aff.	166	Wiues grandfathers ſiſters nephews daughter.	
Aff.	167	VViues grandmothers brothers nephews daughter.	
Aff.	168	VViues grãdmothers ſiſters nephews daughter.	

23. Section.

4. Deg. *The ſame line continued ſtill, and fourth degree.* — Canon.

Con.	169	Fathers brothers nephews daughter.	
Con.	170	Fathers ſiſters nephews daughter.	
Con.	171	Mothers brothers nephews daughter.	
Con.	172	Mothers ſiſters nephews daughter.	
Aff.	173	Fathers brothers nephews ſons wife.	
Aff.	174	Fathers ſiſters nephews ſonnes wife.	
Aff.	175	Mothers brothers nephews ſons wife.	
Aff.	176	Mothers ſiſters nephews ſonnes wife.	
Aff.	177	Wiues fathers brothers nephewes daughter.	
Aff.	178	Wiues fathers ſiſters nephews daughter.	
Aff.	179	VViues mothers brothers nephews daughter.	
Aff.	180	VViues mothers ſiſters nephewes daughter.	

21. Section.

4. Deg. *The same line continued still, and fourth degree.*

Canon.

Con.	181	Brothers nephews daughter.
Con.	182	Sisters nephews daughter.
Aff.	183	Brothers nephews sonnes wife.
Aff.	184	Sisters nephews sonnes wife.
Aff.	185	VViues brothers nephewes daughter.
Aff.	186	VViues sisters nephewes daughter.

Note that their neeces daughters, and neeces sons wiues, not mentioned, as well as their nephewes daughters, nephews sonnes wiues, mentioned in this Section; be also parcell of this Catalogue. And likewise in the 21.22.23 Sections before, where they bee not mentioned in their particular tearmes, yet neuertheleſſe be of the same Catalogue, line, and degree, with their Section: such be in the 21. Section, great grandfathers, and mothers sisters nephewes, and their sisters neeces daughters: and in the 22.23. Section, grandfathers and mothers, and fathers and mothers brothers neeces, and their sisters neeces daughters. This vnderstood, the Canon Catalogue ceaseth.

Of the neceſſarie parts of this treatiſe, to the vnderſtanding of the reaſon of the Computation in the Catalogues of this Table.

IF thou commeſt (Chriſtian Reader) to this Table, not hauing read the treatiſe before, nor read nor excerciſed in the Canon & ciuill lawes both, it will ſeeme ſomwhat ſtrange vnto thee, why the ſecond degree in the 2 Section of this table, ſhould not encreaſe in the eight Section following: and likewiſe why the third degree in the 11. Section, ſhould not encreaſe in the 12. & 13. Sections of the ſame: and that the 4. degree in the 18. Section, ſhould continue the fourth, ſo manie Sections after.

Theſe computations be (verily) naturall: and yet (without induſtrie) more than common reaſon can reach vnto, ſuch be the ſecrets of bloud.

Now, if thou wilt be idle, thou maiſt wonder ſtil, otherwiſe, this treatiſe is but ſmall it ſelfe in the whole, but much leſſe that part of the ſame (by many degrees) that is the totall ſum to reſolue thee.

To the vnderſtanding therefore, or thy vnderſtanding of this Computation readily in the Catalogues of this table, firſt confer (with the ſame) parte of the 2. Chapter, *viz.* from theſe wordes, *A new found Queſtion, fol.* 12. to theſe words that follow, *viz. Haue therefore in one degree &c. fol.* 13. there thou haſt the *Lateran ſynod.* Secondly, the 6. chap. in all: there is deſcribed the collection, ſtate, and condition of eue-

rie

rie perſon, his line and degree by the laws, by the Canons. Thirdly I commend thee to the figure and declaration of Conſanguinitie or blood, at the end of the 7. chap. this appertaineth to the 6 chapter, & that to this, either giuing light vnto other, but both a manifeſtation to the diligent reader.

Laſt, I referre thee to this conſultation, *viz.* *In contracts of matrimonie*, what is lawfull, what honeſt, and what expedient. Some ſmall helps, if theſe ſhall not miniſter vnto thee, with ſome little labor of thine owne, they ſhall ſomewhat prepare thee (at the leaſt) to conſult with the Learned.

FINIS.